CHARLES CLINTON NOURSE

C. C. Mouse

Autobiography of

Charles Clinton Nourse

Prepared for use of Members of the Family

CONTAINING THE INCIDENTS OF
MORE THAN FIFTY YEARS' PRACTICE AT THE BAR
IN THE STATE OF IOWA

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CHAPTER I

Ancestry and Early Life

Des Moines, Iowa, May, 1908

To Master Joseph Chamberlain,

Dear Joe:

I promised your father that I would write you a long letter containing in detail something of a biography of myself. He assures me it is not intended for publication, but only for your perusal and for such friends of the family as may now or hereafter deem it interesting to know something of those of the family who have preceded them.

In Washington county, in the state of Maryland, near the little stream of Antietam creek, where was fought one of the memorable battles of our Civil War, there is located a quaint, old fashioned village called Sharpsburg. The inhabitants of the village and neighborhood were in a large part Germans or of German descent.

On one corner of the public square there still remains, in fairly good repair, an old fashioned stone dwelling house. In this house on the first day of April, A. D. 1829, I was born, as were also my two older brothers, Joseph Gabriel and John Daniel, born respectively June 25, 1826, and November 30, 1827. This stone house at one time belonged to my grandfather, Gabriel Nourse, who was the son of James Nourse. The ancestors of the latter are given in a book now in the possession of your mother, entitled *James Nourse and his Descendants.*

In the basement or first story of this stone building my father taught school about the time of the birth of his three boys, given above. At that early day the people of the village

and surrounding country were not supposed to be very highly educated. If children were taught to read and write indifferently and something of arithmetic, at least as far as the single rule of three, their education was supposed to be sufficient for the practical purposes of life. My father has related to me that when he first commenced teaching in the village, in the presence of such a company as usually assembles around a country store, a wise man of the village explained to his admiring hearers that the cause of the changes of the moon resulted from the fact that the earth came between the sun and the moon and hence obstructed the light in such a way as to produce the new moon and the various changes until the full moon. My father rashly attempted to suggest that the wise man was mistaken, for the obvious reason that the moon in its first quarter could be seen in the heavens at the same time as the sun could be observed, and it was impossible that the moon could be partially darkened by the shadow of the earth. The wise man was rather mortified by this exposure of his ignorance, but did not acknowledge his error, but angrily reproved a young man for presuming to differ with him.

In this stone building also my grandfather, Gabriel, died in April, 1839, and was buried in the village churchyard. This stone house is still standing at the date of this writing, and the basement room where my father taught school is occupied as a store-room for vending relics and curiosities gathered from the battle-fields of the neighborhood.

Three miles from the village of Sharpsburg, on the Virginia side of the Potomac river, there is another quaint, old fashioned village called Shepherdstown. Here my mother, Susan Cameron, was born October 25, 1803, and was married to my father, Charles Nourse, June 10, 1825. Here in this village my mother died October 10, 1835. There is still standing in this town the old Methodist church, surrounded by a village churchyard, where will be found modest tombstones marking the graves of my mother, and of many of her brothers and sisters, and also her mother, Susan Cameron, who

died at Shepherdstown, Virginia, July 20, 1855. My mother's father's name was Daniel Cameron, born in Scotland, October, 1753. His wife was also of Scotch descent. Her family name was Clinton, which name was bestowed upon me, and in honor of my grandmother and to please her I have always been known in the family by the name of Clinton, my first name being Charles, so named after my father. My father, Charles Nourse, was born at Frankfort, Kentucky, April 15, 1801.

Several years before my mother's death my father had removed from Sharpsburg to Frederick City, Maryland, where he taught school for several years, and while living there, to-wit, August 9, 1833, your mother's mother was born.

My recollections of my mother are not very distinct, as I was only six years old at the time of her death. Only one incident of my early childhood I call to mind very clearly. I had been induced by my older brothers and some neighbor boys, whilst playing in the market square at Frederick City, to attempt to imitate them in the use of chewing tobacco, which resulted in making me very sick. Whilst lying upon the trundle bed in the room upstairs of the house were we resided, I vomited very freely, and as I lay back upon my pillow, pale and weak from the effort, I remember a kind face of one stooping over me and sympathizing deeply, not knowing the cause of my illness, and I remember how guilty I felt at being the object of so much undeserved sympathy.

The last two years of our residence in Maryland we lived at a little village at the foot of the Blue Ridge mountains called Burkettsville, and during part of these two years my grandmother Cameron kept house for us and had charge of her four grandchildren. I remember her very distinctly, the most affectionate and patient woman it was ever my fortune to know.

In February, 1841, my father, with his four children then living, took the old fashioned stage-coach at Boonesboro, Maryland, crossing the Allegheny mountains, coming on to Wheeling, crossing the Ohio river, and thence via Zanesville

and Somerset, Ohio, to the little village of East Rushville in Fairfield county, Ohio. After teaching school in East Rushville during the summer of that year, my father with myself and sister Susan removed to Lancaster, the county seat of Fairfield county, Ohio, leaving my two older brothers as heavy clerks in country stores—my brother Joseph with a man named Clayton and my brother John with a man named Paden, in two separate villages in the county of Fairfield. My father taught school in Lancaster, Ohio, for four years, I think most of the time for a compensation of $300 a year. As this sum was hardly sufficient to support him and his two children at a respectable boarding house, it became necessary for me to relieve the situation and to start out in the world for myself. My first attempt was in a country store at East Rushville with a man by the name of Coulson. After four months heavy clerking with this man, he failed in business and sold out his stock of remnants, and I returned to Lancaster to my father. After a few months I again attempted to do business in support of myself, and I hired out to another village store-keeper, without any fixed compensation further than that I was to have my board and clothes for my services. My duties consisted of weighing out groceries, taking in eggs, butter, and feathers, and packing and preparing for shipment the butter and eggs, for which there was not sufficient local market. I also sold goods through business hours, made fires both in the store and for the family, sawed wood, milked the cow, and in the fall and winter fed, curried, and cared for a half dozen horses that were shipped in the spring for the eastern market. At the end of sixteen months of this kind of service my employer advised me and also my father that I would never make a merchant. I had positively refused to conform to his instructions in doing business in the manner in which he thought was most for his interest. He was engaged also at that time in buying leaf tobacco that was raised in the Hocking hills, for which he paid about one-third cash, one-third on short time, and one-third in goods out of the store. He had three prices or more

for nearly everything he had to sell, depending, of course, on the character of his customer and the kind of pay he was to receive. For instance: his cash customers, of whom there were very few, received four pounds of coffee for a dollar. His long credit customers, of whom there were many, received three pounds of coffee for a dollar, whilst his trade customers, especially those who took goods out of the store for tobacco, received two and a half pounds of coffee for a dollar. It was not easy for a young boy, or as young a boy as I was at that time, always to understand the exact standing of the customers, and it was necessary to watch carefully the old man who was proprietor of the store, who indicated by signs upon his fingers, which I too frequently misunderstood, just exactly how much coffee for a dollar a customer was entitled to. One remarkable incident of the manner in which my employer did business I remember very distinctly. During the day our little store was crowded with customers who had sold tobacco to our employer and had to take their pay in part out of the store. A young man by the name of Johnnie, who was a year or two older than myself and a favorite with the proprietor of the store, had during the day sold to a German woman a large red and yellow cotton handkerchief for the sum of thirty-seven and a half cents that was marked twelve and a half cents and had cost us eight and a third cents. The next day she returned with one of her neighbors who also had to take her pay out of the store for tobacco, and she wanted another of those red and yellow cotton handkerchiefs, which Johnnie sold her of course at the same price. In the evening Johnnie and myself had to go over to the old gentleman's residence before we retired for the night and attend family prayers. During the evening the old gentleman recited Johnnie's exploits in selling those cotton handkerchiefs for three times the marked price, and then chuckled gleefully, praising Johnnie for his success and how he would make a merchant, but that I would never learn; and then turning to his eldest

daughter he said: "Hand me the bible, dear, we will have prayers."

Whilst living with this old gentleman I became thoroughly disgusted with mercantile life, as I then saw it and witnessed it, and cast about in my own mind seriously to know what I should do for the future. I realized that I neglected my opportunities whilst attending school under my father's instructions, and I resolved, as far as I could under the circumstances, to supply the omission. I got out my old Kirkham's grammar and my arithmetic and algebra, and spent many of my nights after the store closed in study. At the end of sixteen months of this life I returned again to my father, who was still at Lancaster. During the last year that I lived at Lancaster I assisted my father in his school, teaching the younger children, and still to a limited extent pursuing my own studies.

In the fall of 1844 my father determined to remove to Kentucky, leaving my sister Susan, your mother's mother, with Mrs. Catherine Sumner, a most excellent Presbyterian lady with whom my father had boarded for several years during his stay in Lancaster. My father first stopped at Millersburg, Bourbon county, and took up school, but only remained there a few months, having in the meantime heard of a vacancy in the position of principal of the public school in Lexington. Having secured this position at a salary then of only $600 a year, we removed to Lexington in the early part of 1845.

I became one of the assistant teachers in this school at a salary of twenty dollars a month for the first year, but subsequently was promoted to the position of first assistant at a salary of thirty dollars per month, and continued to occupy that position until the fall of 1849, when I secured, by courtesy of the city council of the city of Lexington, the favor of entering the law school of Transylvania University, the city having a number of scholarships in that institution at its gratuitous disposal. During the four years that I taught school as an assistant in the city school, I still pursued my own private studies at night, reciting to my father in the morning

before school hours, until about the year 1848, when I had saved money enough from my meager salary to procure some text books of the law, and commenced reading law. In the meantime I had formed the acquaintance of a young lawyer, Abraham S. Drake, who became a very devoted friend of mine and superintended my reading, giving me such instructions as were necessary. My situation as a teacher in the public school in Lexington was very trying upon my health. I had an average of about fifty small children in a small room not more than twenty feet square, about six hours a day except Saturday, and had to occupy myself with my private studies when I ought to have had the privilege of and needed exercise in the open air. I had some satisfaction, however, in the success of my scholars, making it a specialty to teach them the art of reading well and reading aloud, an art which in the subsequent years I have found our public schools are sadly neglecting. I hope, dear Joe, you will succeed while you are going to school in learning to read, that being a neglected and almost a lost art in this day and generation.

In August, 1846, my father returned to Lancaster, Ohio, and married Miss Hetty Herron, an adopted child of Mrs. Catherine Sumner's with whom my sister Susan had been living. Returning to Lexington, he continued teaching until 1850, when he removed to Millersburg, Kentucky.

In the fall of 1849 I entered the senior class of the law department of Transylvania University, and in March, 1850, graduated and received my diploma from that school. My preceptors were two very able judges of the supreme court of Kentucky, to-wit, Judge Robinson and Judge Marshall. I had first taken up the idea of becoming a lawyer during my residence in Lancaster, Ohio, where I frequently spent my Saturdays in attendance upon the courts, listening with great interest to the speeches and discussions of the eminent men who constituted the bar at that place, among them Henry Stansbury, afterwards Attorney General of the United States, Thomas Ewing, afterwards Secretary of the Treasury of the

United States during General Harrison's administration, Hocking H. Hunter, afterwards one of the judges of the supreme court of Ohio. Whilst residing in Lexington, Kentucky, I pursued the same course, visiting the courts whenever opportunity offered, hearing such men as Henry Clay and Thomas F. Marshall, and other distinguished lawyers of Kentucky, arguing their cases.

In the meantime I had joined the Methodist Episcopal church on probation, and made the acquaintance of Miss Rebecca A. McMeekin.

In the spring of 1850, after my graduation in the law department of Transylvania University, I determined to visit Ohio. I had some idea of settling in that state, as my two brothers who remained in Ohio were then in business in Fairfield county, my oldest brother Joseph having commenced the mercantile business on his own account at New Salem, Ohio, and my brother John had commenced the practice of medicine in the village of New Baltimore in the same county. Before leaving Lexington, however, I felt it due to myself and to Miss McMeekin to explain to her my frequent visits to her house. I wrote her a letter telling her of my hopeless condition financially and of the uncertain prospects of my success in my profession, but protesting my affection for her and my good faith in the attentions that I had paid her, and asking her to decide our future for herself. She made no reply in writing, but in my next visit to her she simply expressed her faith in my ultimate success in my profession, and her entire willingness to risk the future, so that when I left Lexington for Ohio, which I did in April, 1850, I was simply engaged to be married.

When I arrived at Lancaster I entered the office of John D. Martin, an eminent lawyer of that place, in pursuance of a previous correspondence with him. He had been a particular friend of my father and an assistant to him in his school during my father's residence in Lancaster in 1842-3. He already had his nephew, Charles Martin, as an assistant in his office and could not offer me any compensation or any work. After

two months I found it necessary to do something to replenish my exhausted finances. I first took a select school in Millersport, a small town on the canal a few miles north of New Baltimore. After teaching here for three months I took the winter school in New Baltimore at a salary of $30 a month. In the meantime, through the acquaintances of my brother Joseph, located at New Salem, and my brother John, located at New Baltimore, I became known throughout that part of the country as an embryo lawyer. Although not admitted regularly to the practice of law, in the courts of record, I had the right to practice before the justices of the peace of the county, and during that summer I tried some seventeen cases before these inferior courts. I still continued my studies of the law, using very frequently a book known there as *Swan's Treatise*, compiled for the benefit of the justices of the peace of the state by Judge Swan, of Ohio. This book also contained many references to the supreme court decisions of the state, and I was accustomed after school hours to walk to Lancaster and borrow these reports from my friend, Mr. Martin, frequently taking them home and using them upon the trial of my cases, which always occurred on Saturdays when I had no school.

During my stay in Ohio, I read carefully and with much profit to myself, the daily reports of the proceedings of the state convention that was then forming a new constitution for that state.

Many eminent lawyers were members of the convention, among them Mr. Stansbury, afterwards Attorney General of the United States, and Mr. Raney, afterwards Judge of the supreme court of the state of Ohio. Occasionally the learned men of the convention indulged their sense of humor, and among other incidents of the debates I recall the following:

Among other members of the convention there was an uneducated man by the name of Sawyer. Mr. Stansbury, of the committee on the judiciary, reported a provision relating to the powers of certain courts, authorizing them to issue writ of habeas corpus, procedendo, quo warranto, and mandamus.

Mr. Sawyer objected to these Latin terms being in the constitution on the ground that many of his constituents could not understand the meaning of such terms and he wanted the committee to put the words into English language, and also asked for an explanation of the meaning of these words.

Mr. Stansbury very courteously explained that the difficulty was not in the use of the terms proposed, but it was because his friend did not understand the nature of these writs. For the benefit of Mr. Sawyer he explained their meaning, but suggested that the use of any English terms or words would not make the character of the writs any better understood to those who are not familiar with the law. He said that the literal meaning of the words "habeas corpus" was to have the body, and the writ was issued in case any one complained of being illegally imprisoned, or restrained of their personal liberty, and was intended for the purpose of having the body of the person in whose behalf the writ was issued brought before the court, in order that the cause of his restraint or imprisonment might be inquired into and its legality or illegality be determined; that to call the writ, a writ to have the body, would not make the term any more intelligent than to use the words "habeas corpus."

That the word "procedendo" simply meant to proceed or go ahead, and was a name of a writ that was issued by the appellate court to an inferior tribunal, authorizing them to proceed in accordance with the opinion of the appellate court. Out of respect to the character of a man who had become famous in the west, of an early day, he would suggest to his friend Sawyer that this writ might be called a writ of "David Crocket," as it was a favorite motto of that individual to "Be sure you are right and then go ahead."

That the literal meaning of the words "quo warranto" was, "Why do you do it?" It was a writ issued by some superior court to an inferior court or tribunal, corporation or officer, to ascertain by what authority they exercised certain powers; that the only term in English that would express the particular

character of the writ would be the words, "Why do you do it?"

The writ of "mandamus" was a writ issued by the court commanding some inferior tribunal or officer to do and perform certain duties which were required by law and which he had refused to perform. That the only words in the English language that would properly define the character of this writ would be, "Do it, damn you."

It is not necessary to add that Mr. Sawyer gave the convention no further trouble in regard to the Latin names of these writs.

CHAPTER II

Early Experiences in Iowa

In the spring of 1850 I had determined to seek a location for the practice of law in some western state. I first thought of migrating to Oregon, but gave up that idea for the reason that I feared if I traveled that far from my intended I might never have the means to go back to Kentucky to claim her. So, finally, I fixed upon the idea of removing to Iowa. Before deciding this important question, however, I wrote to my intended wife explaining to her the situation and again calling her attention to the uncertainties of the future. As she was two years older than myself I felt that it was hardly justice to her to insist upon our engagement if she felt that my future was too uncertain. I received in answer to this letter a kind assurance that her faith would not fail, and she cited that beautiful passage of scripture containing the answer of Ruth to Naomi: "Entreat me not to leave thee, or to return from following after thee: for whither thou goest, I will go; and where thou lodgest, I will lodge; thy people shall be my people, and thy God my God: where thou diest, will I die, and there will I be buried: the Lord do so to me, and more also, if aught but death part thee and me."

The spring of 1851 I returned to Kentucky for a short visit, my brother Joseph having loaned me fifty dollars in money and trusted me for a new suit of clothes. In the meantime my father had removed to Millersburg, Kentucky, and commenced teaching there, a branch of what I think was known as Johnson's Military Academy, the principal school being at Blue Licks, Kentucky, in charge of James G. Blaine, afterwards a republican candidate for President of the United States. The lady he afterwards married also assisted my

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father, and received visits from Mr. Blaine on Saturdays and Sundays. It was whilst residing here that my sister Susan became acquainted with your grandfather, William Vimont, whom she married in January, 1853.

It was the latter part of May, 1851, when I started west "to grow up with the country." We had then no railroads reaching the Mississippi river from the east, and I took the steamer at Louisville, Kentucky, for St. Louis, Missouri. At St. Louis I took the steamer for Iowa, not yet determined as to my landing. The waters of the river were at flood tide, and on our passage up we saw frame houses floating past us. I landed in Burlington the last day of May, and stopped at the Barrett House. I was not acquainted with a single person in the state of Iowa, had no relative, kindred, or friend to whom I could apply for advice or assistance. After a hearty dinner I retired to my room, took a chair, put my feet up on my trunk, and held a consultation with myself. The question before the house was, what to do next. I had with me a general letter of recommendation from Professor Dodd, then president of Transylvania University, and a particular friend of my father, and another from Dr. T. O. Edwards of Lancaster, Ohio, an ex-member of congress from that state, and also my letter as a member of the Methodist Episcopal church, and my diploma signed by the law faculty and trustees of Transylvania University. After proper consideration I inquired of the landlord of the hotel where I could find a Methodist preacher, as I was satisfied there must be such a person in the city. He directed me to the parsonage. I called upon the minister and made his acquaintance, the Reverend Mr. Dennis, who afterwards obtained some notoriety as a pastor in Kansas at the time of the Kansas troubles. He was a tall, white haired man of pleasant countenance and affable manners. I showed him my papers and told him my object in calling upon him was, through him, to make the acquaintance of some of the leading lawyers of the city from whom I could obtain information and determine

what part of the state I would attempt to locate in. At that time the supreme court of the state of Iowa was in session in Burlington, consisting of Joseph Williams, Chief Justice, George Greene and John F. Kinney, justices. Mr. Dennis informed me that the judges were boarding at the same hotel, the Barrett House, and he made an appointment to go with me to their consultation room that afternoon and introduce me. We made the visit and I found the judges of the court very cordial, and at their request I produced my diploma from the law school, told them who I was and where I was from, and that I desired some information in regard to the best possible location for a young attorney. They requested me to call at their courtroom the next morning at the opening of the court, and they would have me admitted to the practice of law in their court and throughout the state. The next morning I went to the court, and at the request of Judge Kinney, Mr. Dickson, of Keokuk, who was then in attendance at the court, made a motion for my admission to the bar, and suggested the appointment of a committee to examine me as to my qualifications. The Chief Justice announced that an examination was unnecessary—the court had already examined the applicant and was entirely satisfied with his qualifications, and requested me to come forward and take the oath of office, which I did. I made the acquaintance of the clerk of the court, then "Old Timber," as we afterwards called him, his real name being James Woods. That evening Judge Kinney asked me to take a walk with him, and told me he had a brother-in-law, Augustus Hall, living at Keosauqua, Iowa, who was desirous of having a young lawyer associated with him in his office, and if I would go to Keosauqua he would give me a letter of introduction. I ascertained that the stage fare to Keosauqua would be six dollars. Upon taking an inventory of my pocketbook I found I only had about eight dollars left of the money my brother had loaned me. I had with me two trunks, one full of my law books, the other containing my clothing, etc. I interviewed the landlord and told him my situation financially,

and proposed to him that I would leave my books in his custody as I was still uncertain where I should settle, and leave my bill unpaid, if agreeable to him, until such time as I could send for my books. He readily agreed to the arrangement, but proposed that I should take my books and he would risk my sending the amount of my bill, which, however, I declined to do. The next morning Judge Kinney called me to one side, kindly suggesting that it was not unusual for young men to visit Iowa for the purpose of locating who were short of funds, and he would be glad to loan me a small amount if I would accept it. This kindness I also declined. I had no doubt that he had been advised by the landlord of my situation, and he was kind enough to attempt to help me.

The next morning I took the stage-coach for Keosauqua, but owing to the condition of the roads, and particularly of Skunk river, I was taken to Keokuk where I had to stay all night. After paying my bill the next morning I found I had only twenty cents left. The next day the stage-coach took me to The Divide, as we called it, as far as Utica postoffice in Van Buren county, and there left me. The hack that should have taken me from there to Keosauqua had already gone before our arrival. I could not stay here all night because I had no money to pay any bill, so I left my one trunk in charge of the postoffice to be sent to Keosauqua the next day on the hack, and I started to walk, then about ten miles, to reach Keosauqua. I had not walked far before I found that I had sprained my ankle slightly in jumping from the coach that morning. The walking became very painful, but I managed to reach Keosauqua about sundown that evening. The first building that looked like a hotel or public house was a frame building that stood southeast of the court house. The high waters of the Des Moines river had flooded the lower part of the town, and I found this house was a boarding house, at that time full of guests. I inquired for the lady of the house and took my seat on a bench on the porch near the front door. Presently the lady of the house appeared, and looking at me

very inquiringly wanted to know who I was, where I was from, what was my business, and where I was going. I was a sorry looking subject, having waded through the mud for ten miles, and I presume I looked as I felt — very tired. I gave her my real name, told her I had no business, that I did not know where I was going, and that I had come from Keokuk that day. She told me her house was full and she did not believe she could accommodate me with a night's lodging. I then asked her very politely for permission to remain upon the porch until I was sufficiently rested so I could go further down town and obtain lodging, but I asked her about the town, its population, and about the high waters. The lady turned out to be Mrs. Obed Stannard, the mother of Ed Stannard, afterwards Lieutenant Governor of Missouri, and a very successful business man of St. Louis. She was a good talker, and after conversing with her about twenty minutes I got up to leave, thanking her very cordially for her kindness in permitting me to rest on the porch. She relented and told me she thought if I would stay that she could find accommodations for me. I told her no, that I could not put a lady to any inconvenience when it was unnecessary and I must go, so I left and went down to the front street in the town to the Keosauqua House, kept then by "Father Shepherd," as we always called him, with whom I boarded until after I was married in 1853.

Keosauqua, at that time, as indeed it has been ever since, was a small town of about 1,500 inhabitants, the county seat of Van Buren county, located on the Des Moines river. It possessed one of the best bars of the state, and among its inhabitants were men who afterwards became distinguished in the history of the state. The men more actively engaged in practice were George G. Wright, for many years afterwards a judge of the supreme court of the state, Joseph C. Knapp, judge of the district court of that district and afterwards United States District Attorney, and Augustus Hall, afterwards a member of congress from that district and ap-

pointed by Mr. Buchanan United States District Judge in Nebraska. The courts of this county were also visited by J. C. Hall, afterwards one of the judges of the supreme court. The pastor of the Methodist church at that time was Henry Clay Dean, who afterwards became chaplain of the United States Senate, and a notorious political orator. One of his converts was Delizon Smith, who had been an infidel lecturer and prominent politician in the state, and was afterwards elected for a short term to the United States Senate from the state of Oregon. The next year after I settled in Keosauqua, Henry Clay Caldwell, then a student in the law office of Judge Wright, was admitted to the bar, and after the Civil War was appointed United States District Judge and afterwards United States Circuit Judge, being located during his official career as judge at Little Rock, Arkansas, now retired by reason of age and continued service, and residing at Los Angeles, California.

The state of Iowa at that time in its politics was democratic, and the democratic party numbered a majority of about two hundred in Van Buren county. Delizon Smith, however, had failed to obtain a nomination by his party for the office of Governor, and had organized what was called "The Young Democracy of Van Buren County," numbering about two hundred voters. This left the party badly demoralized in the county, and in August, 1852, I had so far succeeded in making the acquaintance of the people of the county that I was elected on an independent ticket to the office of county attorney, which then paid a salary of about three hundred dollars a year.

After I had boarded with Father Shepherd for a few weeks I received from my brother Joseph a small remittance. I sent for my books that I had left at Burlington and took Father Shepherd, the landlord, into my confidence, told him my situation financially, and paid my bill up to that date. Father Shepherd at that time was himself a justice of the peace, and his hotel was the stopping place of most of the

people who acted as guardians and administrators, and who attended once a month sessions of the county court that then had jurisdiction in probate matters. I told Father Shepherd of my desire to make the acquaintance of these officials as they visited his hotel from time to time, and that his pay for my board depended largely upon my success in business, and I asked him to be my friend, and at least let people know why I was there and what my proposed business was. He became my fast friend and helped me to make very many valuable acquaintances. Father Shepherd was the father-in-law of Delizon Smith, and a leader of the faction known as the "Young Democrats" of that county.

Early in the spring of 1853 I received a letter from my then intended wife, suggesting that my success in business she thought gave sufficient promise for the future, and that it was not necessary for us to wait longer. Accordingly I got together one hundred dollars in money, made a trip around the river to Louisville, Kentucky, and thence via rail to Lexington for the purpose of realizing something of the deferred hope. We were married on the 15th of April of that year, my father in the meantime having removed from Millersburg to Winchester, Kentucky. I made him a visit in company with my bride and had the pleasure of meeting there my sister Susan and her husband, William Vimont, your mother's father and mother. Before going to Kentucky and claiming my bride I purchased from the Reverend Daniel Lane a house and two lots in Keosauqua at the price of three hundred and fifty dollars, and borrowed fifty dollars from Thomas Devon to make the first payment. I had also attended several auction sales and bought some chairs and tables, a cook stove and a few dishes. My wife's mother had packed a feather bed, some pillows and bed clothes, and quilts of the old style in a store box, and we returned to Iowa the latter part of April, 1853. The expense of my trip and marriage left me only two dollars of the one hundred dollars I had when I started for my bride. We arrived in Keosauqua on

Sunday in a slight April shower. On Mondey we proceeded to the house I had purchased, which was in need of repair. We whitewashed the walls and my wife washed the windows. The next day we made a bill of about forty dollars at the store for additional house-keeping facilities. I bought a sack of flour and a ham of meat, and on Tuesday evening we took tea at home. It was the first home I had had (in the proper sense of the term) since we left Maryland, and when we sat down at our own table to drink our cup of tea and eat the new made biscuit baked by my own wife, I could not repress the tears that came to my eyes, and I thanked God for the mercy that he had bestowed upon us.

In the fall of 1853 I made a trip west through the southern tier of counties, attending the courts at Davis, Appanoose, Wayne, and Decatur counties. I made the trip on horseback with a pair of saddle-bags that contained my necessary baggage.

From Bloomfield I was accompanied by several attorneys of that bar, and at Centerville two or three additional lawyers joined our party. The counties west of Centerville were very sparsely settled and the road consisted merely of two paths worn by the horses and wagon wheels on the prairie grass. In Wayne county we applied at one settler's house for accommodations for the night, but the housewife informed us that her husband was away from home, had gone to mill, and that she had nothing in the house to eat save a little bacon. She said if we would remain she would entertain us with such accommodations as the place afforded. The corn was hardly yet ripe enough to feed our horses, but she told us if we would select the ripest and use some salt in feeding we were welcome to do so. We also, at her request, plucked some of the softer ears of the corn, and these she grated upon a large tin grater, and frying some of the bacon in her skillet she made cakes of the grated corn and fried them in the fat. She also gave us a cup of good coffee, and with the

appetites we had acquired in our day's travel we made a very hearty and palatable meal.

When bedtime came she made some kind of a bed upon the floor. The next morning we had a breakfast of the same corn and bacon and coffee. The lady made a very reasonable charge for our entertainment, and she had no reason to doubt the sincerity of our compliments upon our fare, as the avidity with which we had eaten what she had supplied gave full evidence that we had appreciated our entertainment. The next morning we rode into Corydon, the county seat of Wayne county. The only hotel in the place was a small one and one-half story frame house, with a shed addition for kitchen and dining hall.

Our bed room was the upstairs, and our beds were in two rows, with our heads under the eaves and our feet touching each other in the center of the room. We had no separate apartment or separate beds, our wearing apparel furnishing the pillows.

The court was held in a frame school house on the public square. The boundaries of the public square were ascertained by a lot of wooden stakes or pegs. There was no general store in the place for the sale of goods. An enterprising peddler with two large peddling wagons came through with us from Centerville and erected a large tent in the center of the square for the display and sale of his goods, and whenever the court was not in actual session his store was opened for business.

Judge Townsend, of Monroe county, was the judge of the court.

From Wayne county we went to Decatur, the peddler also keeping us company with his itinerant dry goods establishment. During this trip I made the acquaintance of very many young men who afterwards became distinguished as lawyers, legislators, and judges. The only lawsuit in which I was consulted was a slander case tried in Wayne county. The suit was brought in behalf of a young woman for damages because of

words spoken against her reputation by the defendant. Amos Harris, a lawyer from Centerville, was engaged as attorney for the defendant. When the case was about to be called for trial Harris expressed his wish to have my advice in regard to the course to be pursued, and at his request I retired with him to the shady side of the school house for consultation. He told me that his client was a man of some property and that the plaintiff had some witnesses who would testify clearly and positively to the slanderous words spoken by the defendant of and concerning the young lady. He said his client really had not injured the reputation of the young woman at all because nobody believed any thing that he said as he had a very bad reputation for veracity. He said they could make no defense whatever, as the girl's character was good, and he was afraid of a large verdict for damages against his client, and asked me if I could think of any way that he could help his client out of the difficulty. I asked him if he could prove that nobody believed what his client said on account of his bad character. He said yes, there were plenty of persons that would testify to that, but he could not see how that was any defense. I told him it was no defense against the slander, but it might be proved with advantage in mitigaton of damages, provided his client would be willing that he should undertake to do so. He called his client out and explained to him the situation as I had advised, and asked him if he was willing to save his money at the expense of his reputation. The fellow winced, but finally consented that Harris might make the proof. I suggested that as the plaintiff's witnesses were all friendly to the young lady Harris might on cross-examination prove by them that they did not at the time or ever believe the slander that the defendant had uttered against the plaintiff, and that they had never repeated it to anyone except accompanied by their statement of their belief that it was all false, and Harris introduced several other witnesses to prove the bad reputation of his client for truth and veracity. The plaintiff's attorneys objected and the court first hesitated to allow the witnesses to so testify,

but upon the suggestion that it was the best thing for the plaintiff's reputation, and that as nearly the whole population of the county was there upon attendance of the court, it was better to clear up her reputation by this testimony than to give her money to heal her wounded feelings, the court finally took this view of the case and permitted the evidence to go to the jury in mitigation of damages. The jury found a verdict in favor of the plaintiff against the defendant for the sum of only twenty dollars. The young woman went home with her character thoroughly vindicated and her reputation restored, and the only one unhappy over the result of the trial appeared to be the attorney for the plaintiff, who was undoubtedly expecting a handsome recovery as the only means of compensating him for his professional work.

From Decatur county I returned home, having learned much of the country and its people, and having made many interesting acquaintances among the members of the bar.

And now I must tell you something of my political career, which properly begins at about this date. I had been made chairman of the county committee of the fast dissolving organization known as the whig party. In the fall of 1854 I was a candidate for re-election as county attorney. We had nominated a county ticket of two candidates for the state senate and four representatives, what we then called the anti-Nebraska whigs. James W. Grimes was the candidate for Governor of the state. The democratic party had passed what was called the "Kansas-Nebraska Bill," containing a clause repealing the Missouri Compromise measure, adopted in 1820, that prohibited slavery and involuntary servitude north of thirty-six degrees and thirty minutes of north latitude in the territories of the United States, acquired by the Louisiana Purchase. This had resulted in the partial disorganization of the democratic party throughout many of the northern states. I had left Kentucky because of my opposition to slavery, and especially to what I regarded as the baleful influence of that institution upon the white population. I had settled in Iowa

because it was a free state and because I felt that the opportunities for success in life would be greater than in a slave state. I had observed whilst in Kentucky that fixed conditions of political, social, and business life made the success of the young man, depending only on his own energies and abilities, always doubtful and difficult.

Upon my defeat as prosecuting attorney in 1854, at the suggestion of the members elected to the legislature from Van Buren county I went to Iowa City in their company at the beginning of the session, and through their influence I was elected clerk of the house of representatives of the state of Iowa. I found this position of great advantage and help, not only pecuniarily, but I made the acquaintance of public men of all parties during the session. Afterwards in 1856-7 I was elected secretary of the senate of the state.

In 1854, at the dissolution of the old whig party there existed a political organization in many of the states of the Union called "The Know-Nothings." It was a secret political organization, having for its principal doctrines opposition to the Roman Catholics and to the foreign-born citizens of the United States. I refused to affiliate with this "Know-Nothing" organization for the reason that I did not believe in secret political societies or organizations in this country, and I did not believe in making the religious faith or affiliations of any man a test for office, neither did I believe that anyone should be excluded from the confidence and respect of his fellow men because of the place of his birth. As county chairman of the expiring whig party I issued to the people of Van Buren county a circular stating my position and declining to call any convention to coöperate with the "Know-Nothing" organization. I did this for the further reason that the opposition to the extension of slavery into the territories was becoming every day more and more pronounced in the northern states of the Union, and the nucleus of what was afterwards the republican party had already been formed in many of the northern states.

It may be interesting to you to have the history of how Henry Clay Dean became a democrat, and how a little thing may change the destiny and fortune of a man in this life. In the fall of 1854 the Methodist annual conference for Iowa met at the city of Dubuque. It was the custom at that early day for the members of the conference to become guests of the citizens of the locality where the conference had its meetings. Dean was then a member of the conference, and had been receiving and filling regular appointments as a pastor. At Dubuque resided Honorable George W. Jones, then a democratic United States Senator from Iowa. Jones maintained a good table and was a good liver, and his wife an excellent, hospitable lady. In assigning the members of the conference to the different citizens, Dean was assigned as the guest of Senator Jones and his wife. After the conference had been in session a few days, the "Know-Nothings" having been secretly organized in the city of Dubuque became very active in obtaining the names of the Methodist ministers attending the conference, and in initiating them into their order. Among other names presented and favorably acted upon was that of Henry Clay Dean, my former pastor and friend. After he had been elected and the time appointed for his initiation a few nights hence, one of the over zealous ministers represented to Brother Dean that as he had now been elected a member of the "Know-Nothing" organization it was not proper for him to continue to be the guest of and accept of the hospitality of the wife of George W. Jones, who was a Roman Catholic. Dean was an enormous eater, and the suggestion that he should give up his nice boarding place greatly offended him, and he denounced the suggestion as bigotry and presumption inexcusable. He at once went to Senator Jones and told him of the proposition that had been made to him and the cause of it, and denounced the "Know-Nothing" organization in most uncompromising terms. The Senator was pleased with Brother Dean's zeal in the matter, and induced him on the succeeding Sabbath to preach a sermon on "Know-Nothing-

ism'' and to denounce it from the pulpit. Dean was a man of more than ordinary ability, with a wonderful command of language. Upon the adjournment of the conference Senator Jones wrote to Judge Knapp at Keosauqua stating the situation and suggesting that Dean be employed in the political canvass against the ''Know-Nothings'' that fall, and be encouraged in his oppositon to that order. Dean returned to Keosauqua, and I had a long conference with him upon this matter. I knew that he had been engaged several years before that in collecting the most learned and effective arguments in favor of protective tariff as delivered in congress from time to time, especially from whig members from the state of Pennsylvania. I also knew that he had preached some of the bitterest sermons against human slavery that I had ever heard from the pulpit or from any source, and I urged upon him that he could not consistently coöperate with the democratic party because of his views in regard to the tariff and because of his opposition to slavery. I pointed out to him that the organization of the republican party was then proceeding in most of the states and that his feelings, sentiments, and views would be better expressed by the position of that organization; that the ''Know-Nothing'' party was a mere temporary passion and would effervesce and disappear in a short time, and that his efforts in opposition to them would be wholly unnecessary and gratuitous. But he was too wroth and anxious for his revenge against those who suggested that he decline the hospitality and good dinners of Senator Jones. He accordingly entered the canvass, and that fall there being the election in Virginia in which Henry A. Wise was a democratic candidate for Governor and was opposed by the ''Know-Nothings,'' Dean with letters of recommendation from Jones and Senator Dodge and other leading democrats of Iowa went to Virginia and entered the political canvass in favor of Wise and in oppositon to the ''Know-Nothings.'' Wise was elected, and Dean then went to Washington City. With the influence of Dodge and Jones and the Virginia delegation he

was elected chaplain of the United States senate, and thereafter, and especially during the Civil War, he made himself notorious as a democratic orator.

Without observing the exact chronology of events, it would be well here to recite certain facts and incidents that had a material influence upon my mind, and determined my action in regard to the question of human slavery. While residing in Kentucky and boarding in the family of my friend, Abraham S. Drake, I had frequent conversations with him in regard to the subject. He was at that time decidedly opposed to the institution, regarding it as morally wrong and detrimental in its effect upon the white as well as the slave populaton of the state.

Slavery at that time existed in Kentucky in its most modified and humane condition, but the system itself and the law gave to the slave owner a power over the slave that was too frequently abused. One instance I recall that made a powerful impression upon my mind. On a beautiful Sabbath morning in the early part of the summer I was taken sick, while in attendance upon religious services at the Methodist Episcopal church, and was compelled to leave the church and go home, soon after the singing of the opening hymn. On the way to my boarding house I passed near what was known as the "Watch-house" or headquarters of the police, and was shocked to hear the cries of a negro woman who was maid to some wealthy mistress, who had become offended at her that morning, and had sent for the police and given orders that her servant be taken to the police quarters and given a certain number of lashes, administered in expiation of her offense.

The contrast between the quiet worshipers at the church and their seeming devotion, and the horrible cries that filled the air from the unfortunate negro slave woman was a comment upon the injustice and brutality of the institution, that made an impression upon my mind that has never been erased.

In 1853 when I went to Kentucky for the purpose of being married I was the guest of my friend Drake for several days.

While sitting upon the veranda one evening one of his children was playing upon the lawn in front of the house, with a little negro tot two or three years of age. He called my attention to the colored child, stating that that was his "carriage driver" and that he was a child of one of the negro women that his wife had inherited a few years before, and he remarked that the child was worth then $600. I reminded him of our former conversation and discussion in regard to slavery and expressed my surprise that he would have any pleasure in calculating the money value of this child. He informed me that his views on the subject of slavery had undergone quite a change, and upon investigating the subject he was satisfied that the Bible fully justified the institution of slavery, and he thought it was right morally as well as legally to own and enjoy the possession of such property. I said but little in response to these arguments, but could not but reflect and be convinced that it was pecuniary investment that had its baleful influence upon the conscience of my friend and perverted his moral sense, and this was only to me an additional reason for hating the institution.

When returning from Kentucky with my bride we stayed over a day at Louisville, as my wife desired to visit some old friends and former neighbors who had resided near them in Lexington. We accordingly made a call upon her friends, and while sitting in the parlor conversing about old times a colored woman about the age of my wife came into the room, and greeting us begged to inquire of my wife in regard to her husband, it appearing from her story the family had moved from Lexington to Louisville about two years before, and that the woman had been separated from her husband, who still resided in Lexington and was the property of another party. In the meantime the slave woman had given birth to a child, and amid her tears told how she longed to see her husband and have him see her young babe. The interview was cut short when the slave woman was remanded to the kitchen, and the cheerful recall of pleasant reminiscences became rather sad.

The family insisted upon my wife and myself remaining to dinner and pressed upon us with great earnestness their hospitality. My wife was disposed to accept of the invitation, but having only been married the week before, I was not prepared to accept of the hospitality of people who separated a husband and wife thus ruthlessly, and I retired with thanks, and we took our dinner at the hotel.

After I settled in Keosauqua, Iowa, I became a subscriber to and a constant reader of the New York *Tribune,* and in due time also read with much interest that wonderful book written by Harriet Beecher Stowe, called *Uncle Tom's Cabin.*

During the winter of 1857, whilst I was secretary of the state senate, I enjoyed the pleasure of hearing Wendell Phillips deliver his lecture upon the "Lost Arts." At the close of his lecture Hon. J. B. Grinnell, then a member of the state senate from Poweshiek county, rose in the audience and requested Mr. Phillips to give us his views upon the subject of slavery, and especially called his attention to the fact that Mr. Phillips had been represented by the public press as favoring a dissolution of the American Union. Mr. Phillips courteously complied with the request, and proceeded to say that when the constitution of the United States was formed it contained within its provisions, as he believed, the germ of human liberty. That the declaration of American independence had declared that all men were entitled to the inalienable rights of life, liberty, and the pursuit of happiness. He said that he was in favor of the development of this germ to its fullest extent; that the constitution of the United States might be compared to a box in which was planted an acorn; the acorn would grow in the very nature of things and become an oak, but whether or not the box in which the acorn was planted was sufficient to contain the development and growing germ, he could not say. He was not concerned in regard to the safety of the box, but he was anxious that the germ should develop and that the tree should grow. That whether or not the constitution of the United States could survive the development and growth of

this germ of human liberty that had been planted therein, he could not say, and upon that question he did not feel any very great anxiety; all he had to say in regard to the matter was that he was in favor of the growth of the germ, and he believed that the acorn would grow and ought to grow.

Wendell Phillips was one of the most eloquent and graceful public speakers it was ever my privilege to listen to. I had expected from his reputation as a reformer and abolitionist to hear a man with loud voice and vehement gesticulation, but instead he proved to be mild, quiet, self-possessed, delivering his utterances in the clearest, mildest, and most persuasive tones, commanding the respect of his audience and almost fascinating them with his words.

During the same session I also had the pleasure of hearing at Davenport, Iowa, a lecture from Horace Greeley, the great editor of the New York *Tribune*. I was greatly disappointed in Mr. Greeley's lecture. As a writer I knew him to be the clearest and most incisive in his utterances. His manner on the platform and his speech were those of a drony, sing-song, intonating Episcopal minister, devoid of life and spirit.

The general assembly of 1854-5 elected George G. Wright, then of Van Buren county, Norman W. Isbell, and Wm. G. Woodard, judges of the supreme court of the state to fill the vacancies caused by the expirations of the terms of Judges Williams, Kinney and Greene. At this session also occurred the first election of James Harlan as United States Senator. Mr. Harlan was not permitted to take his seat under this election, for the reason that at the adjourned joint session at which he was elected the senate as an organized body with their president, Maturin L. Fisher, had not participated in the election, but had previously adjourned the session of the state senate. Mr. Harlan was again elected in the session of 1856-7, and his right was recognized by the senate.

In the summer of the year 1856 a republican convention was called for the state to be held at Iowa City, for the organization of that party, in sympathy with other state organizations

of like name and principles. As the sole surviving official of the old whig party of Van Buren county, I called a county convention to meet at Keosauqua for the purpose of appointing delegates to the state convention to be held at Iowa City. I wrote a letter to my friend, H. C. Caldwell, asking him to write a letter to Judge Wright and urge upon him the propriety, as he could not be present at this county convention, of writing a letter endorsing and encouraging the movement. Judge Wright declined to write any such letter, and simply wrote to Mr. Caldwell that he hoped we were doing right in calling the county convention.

I was present at the county convention and started the movement with such enthusiasm as we were able to awaken. Delegates were duly appointed, but the attendance at Iowa City required of them an overland trip of some seventy-five miles.

I then owned what was called a "democrat wagon," having two seats, and a small gray mare and mustang pony. With this team and wagon, when the time came, I furnished the transportation for the delegation, and Van Buren county was represented in the state convention by Abner H. McCrary, our state senator from Van Buren county, Dr. William Craig, George C. Duffield, and myself. I had the honor also to be appointed one of the secretaries of this state convention. This was the first republican state covention held in the state, and was the beginning of the political organization that has ever since, with the exception of a period of four years, controlled the legislation and policy of the state of Iowa.

The first national republican convention met at Philadelphia in the fall of 1856 and nominated General John C. Fremont as its candidate for President. I took an active part in the campaign in Iowa that ensued. At the request of the central committee of the state I spent several weeks in canvassing Davis county. Many of the settlers in the southern tier of townships, both in Van Buren and Davis counties, instead of finding themselves in a slave state, in the state of

Missouri, were really citizens of the free state of Iowa. It was much easier to ascertain the true southern boundary of our state than it was to remove the prejudices of the benighted citizens who had by mistake settled in Iowa, so when I went into Davis county in 1856 to make republican speeches opposed to the existence and extension of slavery in our free territory, I met with small encouragement. We were courteously called "black republicans," and frequently designated as "damn black republicans." At one point where I had an appointment to make a political speech I found an audience assembled that had armed themselves with rotten eggs, with the intention of driving me out of their locality. It so happened that the year before most of these men had been indicted for libel in accusing their school-master of burning down a school house in the township, notifying him publicly to leave the county or suffer mob violence. A civil suit was also instituted against them for damages. I had been employed by them and succeeded in getting them off with the reasonable sum of eight hundred dollars, for which they were truly grateful, and when they found that I was to be the "black republican" orator advertised for the occasion, they generously assured me that if it had been anybody else they would not have permitted him to speak, but as I had stood by them in their trouble I might go on and say just what I pleased. They were a warm-hearted, hot-headed, impulsive set of men. Just how many converts I made during the two weeks that I was engaged in speaking in Davis county I cannot say. We had no republican organization in the county, and the leading men who took any active part in politics in opposition to the democratic party were running Bell and Everett as their candidates. Davis county, at the ensuing election, gave Fremont electors only two hundred and fifty votes, and the vote in the state of Iowa stood as follows: Fremont, 43,954; Buchanan, 36,170; Fillmore, 9,180.

CHAPTER III

Removed to Des Moines

The practice of law in Van Buren county did not prove very remunerative. The district court met only twice a year. The business of the term sometimes occupied only two or three days, seldom beyond one week, and never beyond two weeks.

During the time I had continued to reside in Van Buren county one of the most important cases in which I was retained was a contest over the legality of a will in which the deceased had made a bequest of a small tract of land to the Methodist Episcopal church, organized out on what was called "Utica Prairie." The will provided that the land should be sold by the trustees of the church and a fund created out of which should be paid so much a year to the missionary cause and so much to the support of the minister. The remainder should be expended by the trustees in erecting a house of worship. The trustees of the church had not been incorporated, and the heirs sought to set aside the will on the ground that there was no legal capacity in the trustees to receive the bequest, and on the further ground of the uncertainty of the beneficiaries under the will. I was retained in the case in behalf of the trustees, and had them immediately adopt articles of incorporation and file the same as provided by the statutes of the state. I filed an answer in the case, setting forth with particularity the character of the Methodist Episcopal church's organization, with proper averments as to the certainty of the continued existence of the beneficiaries under the will. The case was tried upon demurrer to this answer, and upon appeal to the supreme court of Iowa the will was sus-

tained. The opinion of the court is fully reported in the case of Johnson et al. vs Mayne et al., Trustees, 4th Iowa, 180.

I charged and received from the trustees the sum of $200 for my services in the case, being the largest amount that I received in my practice from any one case during the seven years I remained in Keosauqua.

The railroad up the Des Moines valley from Keokuk had been located some three or four miles north of the town of Keosauqua, and I saw no immediate prospect of any improvement or growth in the town. Added to these discouragements, my wife and myself in the fall of 1857 were both taken down with the fever and the ague. On advice of our physician we made a visit to Kentucky and also to Ohio to visit our relatives, hoping by some means to escape or shake off the dreaded disease, but the more we shook the stronger the ague kept its hold. I had during that year (1857) been employed by Edwin Manning, the commissioner of the Des Moines River Improvement, to represent the interest of the state in certain suits commenced against him by the Des Moines Navigation & Railroad Company, for the purpose of compelling him to certify to the company certain lands belonging to the state under the grant of congress, made for the purpose of aiding in the improvement of the navigation of the Des Moines river, the company claiming that they were entitled to certain of these lands at the rate of $1.25 per acre for moneys expended in the building of locks and dams upon the river, which expenditure had been certified by the state engineer. The general assembly of the state of Iowa was to meet for the first time in the city of Des Moines on the first day of January, 1858, and I went to Des Moines in company with Mr. Manning at that time for the two-fold purpose of calling the roll of senators upon the organization of the senate, that being my duty as the secretary of the past session, and also to look after the interest of the state in the settlement that was then to be made between the state and the Des Moines Navigation Company, the supreme court having decided the suit, to which I have referred, in our

favor. I found Des Moines to be a thriving young city of something less than five thousand inhabitants, but with great expectation for the future as the permanent capital of the state of Iowa. I was introduced after a few days' stay in the city to Judge W. W. Williamson, an old time lawyer with a good collecting business, who offered me a full partnership in his business, and I finally determined, after transacting the business I had in Des Moines, to return to Keosauqua and dispose of my affairs there and remove to this city, which I finally did, and on the 6th day of March, 1858, with my wife and household goods and the ague, we came to Des Moines.

About a year or more before we left Keosauqua I had traded off the house I had first purchased in the village for a very beautiful home that had been built by L. J. Rose. It had about a full block of ground well planted with young fruit trees and vines and shrubbery and rose bushes. The house was well located on the hill in the northwest part of the village, and my wife as well as myself had become fondly attached to the place. During our five years of residence we had many friends in the town, and we found it hard to leave them. My wife shed many tears at the thought of leaving the place, but the largest amount that my practice had yielded in any one year whilst in Keosauqua was $800, and I was satisfied that our best interests would be promoted by our new location. The location of the permanent capital of the state at Des Moines, and the fact that our supreme and United States courts would be located there, and that it would necessarily become a railroad center and build up and become one of the chief cities of the state, had attracted many other young men of the profession. Within twelve months before the time I settled in Des Moines probably a dozen well educated, enterprising young lawyers had preceded me. The result was a fierce competition and struggle for business, every young man realizing that it was a question of the survival of the fittest, and that his success depended upon himself. Before arriving in the city I had secured a small house of two rooms and a

shed kitchen on Sixth street, at a rental of twenty dollars per month. We moved our goods into this house on Saturday, and on Sunday morning after a light breakfast both my wife and myself went to bed with the ague. The chill was succeeded, of course, by the usual high fever, and in the middle of the afternoon we were delighted by a call from an old acquaintance, a girl that had been raised at Keosauqua and who had married Mr. R. L. Tidrick, of Des Moines. She made us a cup of tea, and we came out of the fever encouraged and contented.

The first two years of my practice in Des Moines were not remunerative. In addition to our earnings we spent $1500 in our living, having saved that amount from the proceeds of the property that we disposed of at Keosauqua.

In the fall of 1859 I took an active part in the political campaign that resulted in the election of Samuel J. Kirkwood for Governor and the defeat of Augustus Ceasar Dodge, former democratic Senator from Iowa. As I had become interested in and contemplated taking an active part in the politics of the state and nation, I occupied my leisure time in more serious and thoughtful consideration of the grave questions that were soon to confront the nation. I read with great interest and studied with great care the debates between Stephen A. Douglas and Abraham Lincoln that had taken place in the state of Illinois, and the struggle between those parties for a seat in the United States senate. I also read with some care and great interest the great questions that had divided those who had framed the constitution of the United States. I became thoroughly grounded in the theory that our fathers in forming our national constitution had established a government with all the essential attributes of sovereignty. Whilst there is a limitation upon the subjects over which the government should exercise jurisdiction, yet within the sphere over which it might exercise any power it was absolutely sovereign and supreme; that the constitution was not a compact or treaty between sovereign states, but that it was a government, deriv-

ing its powers directly from the people, with power to make its own laws and through its courts to interpret and administer its own laws, and through its executive and his appointees had the power to execute its own laws; that the relation between the national government and the individual was direct, with power over his person and his property so far as it was necessary to assert and maintain its jurisdiction; and that it collected and disbursed its own revenues, enlisted and maintained its own armies, built and maintained its own navies, and that its constitution and laws, by the very terms of its organization, constituted the supreme law of the land. That the assumption that it was a mere treaty between the sovereign states, from which any state might at any time secede at its pleasure, was an erroneous assumption, and inimical to our national existence and prosperity. I found upon examination of the decisions of the supreme court of the United States that these views of our national government and its powers had been fully sustained by the supreme court of the United States by the most eminent jurists of the land. Particularly I studied with great care the decisions of the supreme court of the United States, and the opinions of the Chief Justice Marshall of that court, delivered in the early history of our government.

The same fall of 1859 I made a trip through Warren, Madison, Dallas, Guthrie, and Union counties, at the request of the republican state central committee. They furnished me with a covered buggy and pair of horses, without any expense to myself, and loaded me down with a lot of political campaign documents which I undertook to distribute, making political speeches also at the county seats in each of the above named counties.

In crossing from Winterset over to Redfield one afternoon I found the road becoming very obscure, and a smoke arising from some burning prairie northwest of me so darkened the way that I became apprehensive of losing my road. There was no settlement in sight and no one from whom I could inquire the way. While I was seriously pondering upon the dif-

ficulty, a half dozen or more fine short horn cows crossed my path ahead of my team and I thought the safest way out of the difficulty would be to follow the cows, as they probably knew better than I where we were going. I had not followed these cows more than a few hundred yards before the owner of them appeared. He was a young Quaker about thirty years of age, named Wilson. I told him who I was and what my business was and he cordially invited me to go home with him. He lived in a small board shanty, one large room and an attic, situated under the hill. After sheltering his cows in a shed-barn covered with hay he took me to his house. I thought the chances for accommodations rather meager, but I noticed that he had a small yard fenced in front of his house, with a path of flagstones from the gate to the door, and on either side was planted quite a show of flowers and rose bushes. As we neared the house a very handsome young Quaker woman, his wife, with a little girl about three years of age, appeared at the door. Inside it was neat and tidy. The little Quaker wife prepared us a supper of snow-white biscuits and a plate of beautiful honey. She told me that they had attended the county fair that day and had taken a premium upon their honey. I spent a pleasant evening discussing politics with Mr. Wilson and supplying him with political speeches and documents, which I urged upon him to distribute among his neighbors. When bed-time came I climbed a ladder to the attic in which there was just room enough under the shingles for a clean sweet bed where I had a delightful night's rest. After a good breakfast in the morning, Wilson accompanied me on my way. We soon came to a well-beaten road and I found I was on what was called "The Quaker Divide." Near a large Quaker meeting house we met one of Mr. Wilson's relatives, a fine looking old fashioned Quaker gentleman, to whom he introduced me, and I stated my business. I had an interesting interview with the old Quaker and also supplied him with a number of congressional speeches, and before I left him he looked at me very earnestly and asked, how much

pay I received for the work I was doing. I told him nothing for my own services, but my team and buggy were furnished by the state central committee free of charge to myself. At first he appeared a little incredulous that I should be working for nothing and traveling at my own expense, but after further talk with him he seemed to have every confidence in me and remarked very earnestly, "Thee must be a very good man to do this work without pay." I told him we must all "cast our bread upon the waters," and possibly it might return to us after many days; that this would indeed be a poor world if none of us were willing to make some sacrifices for the good of the country. I bid the two Quakers an affectionate good-bye and went on my way much gratified. The prairie was dotted here and there with comfortable, well kept homes. It was a beautiful October morning, what we then and always called in Iowa "Indian Summer." A slight haze rested upon the horizon, and here and there the ripening corn gave a glow and variety to the landscape. I was deeply impressed with the beauty and glory of my adopted state of Iowa, and I thought then, as I afterwards expressed the thought in my centennial address at Philadelphia. "When in the plentitude of His goodness the Divine Hand formed the great meadow between the Mississippi and Missouri, and the finger of Divine Love traced the streamlets and rivers that drain and fertilize its almost every acre, He designated it not for the place of strife, but for the home of peace and plenty, and intended that the ploughshare and pruning hook should here achieve their greatest triumphs."

In the fall of the year 1859, I bought from Dr. William P. Davis a quarter acre of ground just north of Bird's Addition in the city of Des Moines, having upon it an old square frame house without foundation or cellar, which I afterwards repaired and moved into with my family. My wife's sister Julia had been with us during the summer and became engaged to be married to Mr. John Alexander Woodard, a bachelor who had been engaged in the mercantile business and

failed in the hard times of 1856. He was then clerking and selling goods for Mr. Reuben Sypher. I thought it prudent and made condition with Mr. Woodard that he should make it a part of the marriage contract with my sister-in-law that he would purchase from Mr. Sypher in part payment of his wages the lot on the corner of Fourth street and Crocker, and build them a house thereon. He readily agreed with this proposition, and the deed was made to Julia E. McMeekin, and the marriage took place on the first of December following, and a house was built on the lot the ensuing summer, where they had their home for many years free from any annoyance from his creditors. When the bankrupt law took effect after that, I obtained for him a discharge in bankruptcy from his old debts.

In 1860 I was chosen by the republican state convention of Iowa one of the thirty-two delegates that represented our state in the great national convention that met at Chicago and nominated Abraham Lincoln as its candidate for President. I attended that convention and had the honor of being one of the eight original Lincoln men of the delegation, and voted for Mr. Lincoln on every ballot. That convention was perhaps the greatest and most important that was ever convened in the history of our nation. The entire New York delegation was urging the nomination of William H. Seward. I was opposed to Mr. Seward's nomination, first, because I preferred Mr. Lincoln and had the most unbounded confidence in his honesty and patriotism, and secondly, because I disliked many of the men who were urging Mr. Seward's nomination. The reputation of Thurlow Weed and that class of New York politicians created in my mind a distrust, and I felt that we had arrived at a crisis in our national history where we should take no chances.

After the nomination of Mr. Lincoln at Chicago the republican state convention met at Iowa City. I was a candidate before the convention for nomination for the office of Attorney General of the state. Only three of the delegates from my

own county voted for me in that contest. My principal opponent was John A. Kasson of Des Moines. He had been chairman of the republican central committee of the state for the current year, and without my knowledge had been secretly corresponding with various republicans of the state, soliciting their support for the nomination, and secretly hiding the fact from me, and professing to be my friend and in favor of my nomination. Mr. H. M. Hoxie also one of the delegates of that convention from Polk county, had been a secretary of the state committee and was also secretly working for and with Mr. Kasson for my defeat. I had many warm friends and supporters in the convention, particularly from Lee and Van Buren counties and the southern part of the state, and many from other parts of the state with whom I had formed a personal acquaintance whilst filling the offices respectively of clerk of the house and secretary of the senate. There were three other candidates for the nomination besides Mr. Kasson and myself, and I received the nomination on the third ballot.

After my return home I arranged my affairs so as to make an extensive canvass of the state. I exchanged a small tract of land I had in the western part of Van Buren county with Mr. Manning for a covered buggy and harness and a pair of horses, and in the latter part of September arranged a series of appointments, the first of which was at Newton, in Jasper county. As my team was somewhat unaccustomed to the road I started one Sunday afternoon and drove east as far as Mitchellville, and stayed all night with my friend Thomas Mitchell of that place. On Monday morning I started early for Newton. I filled my satchel with political documents and occupied my time during the drive in trying to arrange my speech. I never wrote out my speeches or attempted to commit anything to memory. My plan was to study the subject thoroughly that I proposed discussing, and simply arrange the order of its presentation. While absorbed in this work I reached Skunk river, drove up on the causeway to the bridge, which at the entrance of the bridge was about six feet above the

level of the surface of the ground. As my off horse put his foot upon the first plank of the bridge it proved to be loose and the plank flew up, striking the shin of the other horse. At this my team became frightened and commenced backing to the south of the causeway, and for a moment I apprehended that I should be precipitated over the causeway with the horses and buggy falling upon me. I collected the reins hastily in my left hand, seized the whip, yelled to the horses, struck the off horse violently with the whip, using my left hand at the same time to draw them around onto the road so that they would not take me over to the other side of the causeway. I felt the near hind wheel of the buggy falling over the embankment, but the horses sprang forward, unfortunately breaking the axle, and as I brought them around into the road I stepped out of the buggy, threw the lines onto the wheel, and let them run. They did not run more than one or two hundred yards before the lines, which had caught in the wheel, wound them up, and the lines being strong it stopped them. I followed hastily, detaching the horses from the buggy, tied them to the trees, then walked about two miles to a farm house where I engaged a farmer with his farm wagon to take my buggy to Newton and to lend me a saddle upon which I rode one horse and led the other. In this way I reached Newton for late dinner, and taking my broken buggy to a blacksmith engaged for its immediate repair, as it was necessary for me to take the road again early next morning to meet my next appointment, which was at Grinnell, in Poweshiek county. I had a small audience that afternoon at two o'clock in the court house, and made them a short speech, appointing another meeting for 7:30 that night.

The next morning my vehicle was in good order and I took the road, reaching Grinnell in good time for my meeting, which was at night.

In arranging my appointments I reached the Mississippi river at Clinton. Crossing the river I drove over to Mt. Carroll, Illinois, for the purpose of a day's rest and to visit my

relatives at that place. I found there my aunt, Ann Austin, and her two boys, also her oldest daughter, married to a man by the name of William Brotherton. Mr. Brotherton and the two boys were ardent republicans, and being advised of my coming, they had advertised me for a speech on Saturday night. I spoke to a crowded house for nearly three hours amid great enthusiasm. The next day, Sunday, the county central committee waited on me and insisted that I should arrange a week with them and speak at various points in their county, which I necessarily declined to do.

On Sunday afternoon I drove north to a little mining village called Elizabeth where my aunt, Sarah Nourse, a maiden sister of my father, was then living and teaching school. I stayed all night at this town of Elizabeth, and my aunt entertained me during the evening until nearly eleven o'clock with an account of the various propositions of marriage she had had from some half dozen bachelors and widowers, all of which she had declined, giving as an all-sufficient reason for it that her suitors were not men of education and sufficient intelligence to make companions for her, and she suspected them of wanting what little money and property she had.

The next day, Monday afternoon, I drove to Galena where I remained all night and heard the cheering news of the result of the state elections of Ohio and Indiana, both states giving handsome republican majorities. This really assured the success of Mr. Lincoln at the approaching November election.

The next morning, Tuesday, I crossed the Mississippi river at Dubuque, having had an appointment to speak in Dubuque that day. It so happened that the democrats had prepared for a grand democratic rally that day, at which Mr. Douglas, their candidate for President, expected to be present. At the suggestion of my friends I stayed over until the next day. I was anxious to hear Mr. Douglas, and attended his meeting, which was well attended by his followers and friends. I could not but feel sorry for and have some sympathy with the man

when he came upon the platform to speak. He had of course heard the news of the result of the elections in Ohio and Indiana, and knew that the hopes and aspirations of his life were forever blighted. Douglas was called "the little giant," and he truly was a brave man. He stood before the audience, knowing that his fate as a candidate for the presidency was forever sealed, but he never flinched or gave any evidence whatever of his disappointment. I wished to hear Mr. Douglas, not because I expected to hear anything new, for I had studied well his speeches and knew his views upon the subjects about which he was to talk, but I wished to study his method and manner, for I knew he was an experienced man upon the platform. He never spoke a sentence without first inhaling a full breath. He made his sentences short and never uttered a word when his lungs were exhausted. He always expressed himself in clear and concise language, and I think never changed the construction of his sentences or attempted their construction after he had commenced their utterance; hence there was no confusion, no hesitancy, and no exertion of the voice beyond what he anticipated when he began his utterances. I learned much from his manner of speaking, and after that tried to practice his art and skill in the management of my voice, and I think with some success, for during that canvass I frequently met our republican speakers with their throats inflamed and bandaged and so hoarse that they scarcely could be heard, whilst during the seven weeks that I was engaged in speaking, I spoke on an average once or twice a day without any difficulty or hoarseness or inflammation in my throat. I frequently relieved my voice by dropping into a conversational tone, finding this much easier for myself and much more agreeable to my hearers. I indulged frequently in anecdotes and amusing illustrations, and endeavored not only to convince the people by arguments but at the same time to entertain them.

I remained at Dubuque and spoke in the German theater on Wednesday night. The republicans, of course, were enthusi-

astic and joyous. The result of the elections in Ohio and Indiana had aroused and confirmed their hopes of success. I spoke from the stage of the theater for three long hours. I interspersed my remarks with frequent anecdotes that were received by the audience with shouts of applause. At one time after the general applause had partially subsided, some gentleman near the orchestra box was seized with a second paroxysm of laughter, and actually rolled off his seat to the floor shouting and screaming with delight. The entire audience arose to their feet, looking over the heads of those in front to see what had happened. I beckoned to them to please be seated, that it was only one of the new converts that was shoutingly happy. This awakened another round of laughter and applause, and I think everyone, unless it might have been some disappointed democrat present, was uproariously happy.

It would not be profitable to undertake to give an account of my many meetings during that canvass. I traveled about fifteen hundred miles, spoke in more than fifty counties of the state, continuing my labors up to the night before the November election.

One incident I recall that probably is worth recording: I spoke at Glenwood, in Mills county, to a large audience of ladies and gentlemen, and after discussing the political issues of the day I told them that there was a matter of a personal nature that I had not yet mentioned and that I would communicate to them in confidence: that I had been nominated by the republican state convention as their candidate for Attorney General of the state, that after my nomination I was somewhat doubtful as to the course I ought to pursue, whether or not it would be best to stay at home and trust to the strength of my party, or whether I ought to go over the state and discuss the political questions of the day and let the people know and hear for themselves what manner of man I was, that they might judge for themselves as to my competency to fill the important office for which I was a candidate. That in all cases of doubt or difficulty I had made it a rule to consult my wife, and I laid the

matter before her, asking her advice as to what she thought it was best for me to do; that she immediately decided that I must go and speak to the people and let them see and hear me, adding that I could trust the people, that the people of Iowa beyond question knew and appreciated a good man when they could see and hear him. The audience shouted their applause at this conclusion of my address, and when I came down from the platform many friends came and shook hands with me, and especially the ladies, assuring me that the decision of my wife was correct.

The result of the election is a matter of history. Mr. Lincoln received the electoral vote of Iowa by some fifteen thousand majority, as did also every candidate on the republican ticket, including myself. At the close of my first term I was renominated and re-elected without opposition.

The duties of my office as Attorney General of the state consisted in advising the Governor and state officers when called upon by either of them for my opinion, and also when requested by that body to give my opinion to the general assembly, also to represent the state in all criminal cases appealed to the supreme court of the state. Our supreme court at that time met twice a year; to-wit, in April and October, in the city of Davenport, Iowa, and my duties required me to attend there during the sessions of the court. The judges of the court, a reporter, and myself, and most of the attorneys visiting the court from time to time, boarded at the Burtis House, an excellent hotel kept by Dr. Burtis at that time. It made up a pleasant party, and it was rather a pleasant episode in my professional life. The only important opinion I was called upon to give to the general assembly was as to the constitutionality of the proposed law providing for the soldiers' vote. The supreme court of Pennsylvania had held a similar statute under their constitution to be unconstitutional and void. I examined the question carefully, because it was one of great importance. So many of our loyal voters in the state were absent from the state as soldiers in the Civil War, and

there was a great danger that those who sought to embarrass the prosecution of the war might place in control of our state affairs men inimical to the cause of the Union and nation. I gave an opinion to the legislature that the proposed law was constitutional. It was passed and afterwards sustained by the unanimous opinion of the judges of our supreme court, and from that time forward there was no question about the political status and conduct either of our state legislatures or our representatives in the national congress.

Soon after the opening of the Civil War the legislature of Iowa was called together in extra session, and enacted a law providing for the issuing of $800,000 of war defense bonds to be sold for the purpose of providing means to equip and muster into service the troops to be furnished by Iowa for the national cause. It also provided for three state commissioners with authority to put these bonds upon the market and sell the same at the best rate they could obtain. A number of other states in the Union had also provided for the issuing of bonds and the raising of means to arm and equip their soldiers. Hence when these commissioners went to New York for the purpose of putting our bonds upon the market, no desirable bids could be obtained. Our Secretary of State, Elijah Sells, had been ordered or requested by Governor Kirkwood to take these bonds to New York in order that they might be ready for delivery in case of sale. There was danger to be apprehended that the commissioners might attempt to hypothecate these bonds, or pledge them for a loan of money. The bonds bore eight per cent interest per annum, and they would constitute a great prize if the money sharks could get hold of them and sell them at any price they might bring in a money market then flooded with similar paper. Being advised of the situation, I accompanied the Secretary of State to New York, at my own instance and expense, for the purpose of advising the Governor and commissioners that under the law they had no authority to pledge or hypothecate these bonds, but could only sell them in the manner expressly

provided by the statute. I had an opportunity of giving this advice, which I did very readily in New York, and I had the satisfaction of seeing the bonds brought back to our state and sold at a fair price to our own people.

My salary as Attorney General was one thousand dollars a year and a contingent fund of four hundred dollars additional each year. My official duties occupied about one-half of my time, and I continued in the general practice, except as to criminal cases, which yielded me about fourteen hundred dollars additional, making my income during these four years about twenty-eight hundred dollars which was rather more than any state officer or even judge of the supreme court received at that time.

Upon the inauguration of Mr. Lincoln in 1860 John A. Kasson, the man whom I had defeated for the nomination of Attorney General of the state, went to Washington City and secured the appointment as Second Assistant Postmaster General, which position he held until the fall of the year 1862, when he secured the nomination for congress from the republican congressional convention of this, the then fifth congressional district.

Upon the election of Mr. Lincoln in 1865 for his second term, I became an applicant for the position of United States District Attorney, putting my application in the hands of Senator Harlan. I also had letters from all of our members of congress and from Senator Grimes favoring my appointment. Mr. Kasson claimed that the appointment fell in his congressional district and he was entitled by courtesy to nominate the person who should receive it. Mr. Withrow, who was still a personal and political friend of Mr. Kasson, came to me personally and stated that if I would write to Mr. Kasson and signify my willingness to receive the appointment as coming through him, that Mr. Kasson would have the appointment made. I accordingly wrote to Mr. Kasson, stating that if he was disposed to recommend my appointment upon considerations of my fitness for the office and without reference to any

supposed personal obligations to favor his political aspirations for the future, that I would be willing so to receive it. Upon receiving this letter, Mr. Kasson immediately went to the President and presented to him the name of Caleb Baldwin, of Council Bluffs, stating that Senator Harlan had been consulted and had agreed to Mr. Baldwin's appointment. Mr. Harlan, upon being advised of what Mr. Kasson had done, immediately went to the President, and at his request the appointment was suspended. On the 14th day of April ensuing, Mr. Lincoln was assassinated and Andrew Johnson, the Vice President, succeeded to the presidency. I immediately requested Mr. Harlan to pursue the subject of my appointment to the office no farther, and there the controversy dropped. I have regarded my disappointment in this matter as rather fortunate than otherwise, as I was not in harmony with the administration of Andrew Johnson and should not have cared to have held office under his administration.

Pending the presidential election the people of Iowa were fully advised as to the threats that were made that in case of Mr. Lincoln's election the southern states would secede from the Union. They were also fully aware of the fact that the then national administration was doing all it could to encourage the southern politicians who were uttering these threats. The position of Mr. Buchanan's administration was that the constitution of the United States conferred on the National Government no power to coerce a state, or, in plain terms, to preserve the nation and prevent its disintegration. The fact that civil war might be inaugurated and was threatened in case Mr. Lincoln was elected was well understood and duly considered. The people of Iowa indulged in no feelings of hatred toward the people of any state or section of the Union. There was, however, on the part of the majority a cool determination to consider and decide upon our national relations to the institution of slavery, uninfluenced by any threat of violence or civil war.

After the election of Mr. Lincoln and the call for troops to aid in putting down the rebellion, I visited Washington City

for the first time in my life. The rebel troops occupied the entire country between Richmond and Manassas and menaced the national capital. On the Saturday before the battle of Bull Run, so-called, I went in company with some friends in a carriage as far as Fairfax Court House. I saw there a number of Union soldiers that had been wounded the day before in the artillery engagement with the rebel general, Beauregard. I returned to Washington Saturday night and arranged with General Curtis, then our member of congress from Iowa, to go out in the morning by rail to the place of the anticipated battle. I remained at Alexandria until after noon on Sunday with the hope of getting transportation on the railway. We could hear the booming of the cannon during the afternoon. I remained in Alexandria till about two o'clock. On finding the expected transportation on the railway delayed and doubtful, I returned to Washington. About midnight we received news of the disastrous results of the engagement that day. The next morning, Monday, I started home on an early train, as my professional engagements that week required my presence in Des Moines. During the great struggle that followed for the preservation of our nation I spent much of my time and all of my income in traveling over the state and attending public meetings, and made frequent addresses in behalf of the Union cause. I did not enter the volunteer service as a soldier or officer of the Union army for the reason that I was satisfied I could do more good to the cause in the position I then occupied as Attorney General of the state. I did at one time apply to Governor Kirkwood for a military appointment as a major in the Third Iowa Cavalry. He very bluntly told me that he did not think he could spare me from the place that I then filled, and he did not think it good policy to spoil a good lawyer for the sake of making a poor soldier. I had no military education and no knowledge of military affairs, and my health was such that I could not have been of any use to the service except in a position where I could take better care of myself than was possible as a soldier in the ranks.

CHAPTER IV

Resumes the Practice of Law

At the close of my second term of office, to-wit, January, 1865, I resumed the practice of law. The firm of Williamson & Nourse, which had existed since my settlement in Des Moines in 1858, had taken into partnership Jacob M. St. John, formerly of Keosauqua, Iowa. As I now had to depend entirely upon my practice for my income I dissolved partnership with Messrs. Williamson and St. John and commenced to practice alone.

In the fall of 1865 Judge Gray, the judge of our district court, died, and Governor William M. Stone, without any solicitation upon my part, at the request of a number of the members of the bar of Polk county, October 16, 1865, appointed me to fill the unexpired term of Judge Gray, deceased. The salary of this position at that time was only $1300 a year, and I accepted of it after considerable hesitation. At the first term of court I held in the city of Des Moines it became my duty to try a number of cases for a violation of the laws of the state prohibiting the sale of intoxicating liquors, except beer or wine made from grapes or other fruit grown in this state. This wine and beer clause of the law had been adopted by the legislature by way of an amendment to what was called the Maine law that had been enacted by the legislature at its session in 1854-5. A number of saloons had been established in Des Moines and licensed to sell native wine and beer, but in fact they all sold whiskey and other spirituous liquors. The grand jury had indicted some seventeen of these saloons as public nuisances under the law. The courts in Iowa prior to this time had adopted the policy of imposing slight fines upon these saloons about once a year, thereby establishing the very worst

and the most reprehensible kind of a license. The sheriff and other officers of the county, elected by the people from time to time, were largely under the influence of these saloons and their patrons. When I called the first of these cases for trial it became necessary to fill up the jury panel from the by-standers, and when the sheriff called the name of a person that he directed to take a place upon the jury, I accidentally noticed that the next case for trial was a case against a defendant of the same name of the person called into the jury-box. I privately called the sheriff to my side and asked him if the person that he had placed upon the jury was the same person as the defendant in the next case, accused of a like offense of the one we were to try. After some hesitation he said he thought he was the same person. I told him that was not a proper discharge of his duties, that he must fill up the panel of the jury with good, law-abiding citizens, and not from those who stood charged with crime on the records of the court. He suggested that I should excuse the juror. I told him no, the mistake was his and not mine, and that he must correct his own mistakes, that he should go to the juror himself and tell him and have him stand aside, and that he must be very careful whilst I presided in that court not to make any more such mistakes. The result was that he filled up the panel with good law-abiding citizens, and that defendant and sixteen others were tried and convicted within the next ten days. I did not pass sentence upon any of the defendants until all the trials were completed. In the meantime I was visited by a number of temperance men who felt anxious to know what character of sentence I was going to give to these persons. I told them it was not proper for me to receive any suggestions out of court, and if they had any to make it must be made in open court in the presence of the defendants themselves or their counsel. I did, however, give the matter very grave and serious consideration. This law in its spirit and in its letter was intended to prohibit the sale or establishing or keeping a place for the sale of intoxicating liquors, other than the wine

and beer excepted by the provisions of the law. The slight fines that had theretofore been imposed for this offense had simply tolerated, and amounted in practice to a system of licensing these violations of the law. I felt it my duty to do something that should prohibit what the law prohibited. After the trials were all over I had the defendants all brought into court and gave them my views concerning the law and concerning the duty of every good citizen to obey and observe the law strictly and in good faith; that this law existed upon the statute books by the same authority as the law that protected them in their persons and in their property, and that the disregard of it was simply to set at defiance the authority from which all our laws eminated. The man who kept the poorest and meanest of these saloons I fined only the sum of one hundred dollars, stating as a reason therefor that the witnesses upon the trial had said they were ashamed to be seen in his saloon and hurried away as soon as possible; that probably the class of men of whom he was making drunkards were not our most valuable citizens. I graded the fines against the others of the sixteen according to the class of persons I thought they were injuring, and the highest fine I imposed was five hundred dollars, against the man who had taken the trouble to prove in the trial that he kept a most respectable resort and that none but the very best citizens of the city were in the habit of drinking at his bar. This action upon my part not only created an excitement locally, but the news of it spread rapidly throughout the state and a number of our district judges followed my example.

When I assumed the duties of judge of the district I found the dockets much crowded with cases that had been delayed, chiefly because of the unnecessary consumption of time by attorneys in the trial of their causes. For instance, one case in Polk county that involved only the question of the identity of a calf worth three or four dollars had occupied two weeks of the time of the court in its former trial. When I called the case for trial a number of attorneys suggested to me that the

case would probably consume the balance of the term, and they might as well dismiss their witnesses and continue their causes. I told them that they were probably mistaken as to the time that would be occupied in the trial of that case. The first witness in behalf of the plaintiff was a timid young girl about fourteen years of age, a daughter of the plaintiff. She told in a simple straightforward way what she knew about the marks on the calf that her father had claimed, and her belief that it was her father's calf. The attorney for the defendant unfortunately was somewhat under the influence of liquor, and putting both heels up on the trial table, he leaned back and in a very rude, aggressive manner addressed the young girl, saying, "I suppose you put in about all of your time examining the calves on your father's farm, don't you?" I immediately reproved the attorney and asked him if he had any questions to ask the witness in regard to the marks upon the calf or its identity. He replied in a haughty manner that he supposed he could examine the witness in his own way and ask his own questions. I immediately told the witness to stand aside and asked the plaintiff to call the next witness. The attorney then said he had not cross-examined the witness and wished to do so. I merely remarked that I had given him an opportunity to do so and he had not improved it, and he could save his strength for the next witness. The result of this kind of discipline was that the case was tried within two days instead of two weeks, and the great calf case was disposed of. I only give this as a specimen of the reforms that I tried to introduce into our courts.

In the most of the counties of our district, which embraced seven at that time, we had no court houses. My first court in Warren county had to be held in the old Methodist church. It had been the custom to fill the aisles and the space about the altar with saw-dust, with one table as the trial table for the attorneys, and four or five rickety chairs. This saw-dust when it became heated, as it did in the winter time from the large stoves used in heating the room, filled the air with very fine

particles of dust that often settled upon the lungs of the members of the bar and the court, and was itself injurious to health. After impaneling the grand jury on the first day of the term at Indianola I announced that the court would adjourn until Tuesday and that the sheriff would clean the room of this sawdust and furnish matting for the aisles and the place about the platform, and also furnish an additional table for the use of the attorneys and a dozen good substantial chairs. The sheriff informed me in open court that the board of supervisors had refused to furnish such conveniences, and probably would not allow the bills if he should purchase these articles. I advised him that it was his duty to obey the orders of the court, and to present his bill to the supervisors and if they failed to allow the bill to take his appeal to the district court and I would see that he recovered judgment and got his pay. Sufficient to say that the next morning the matting was laid, the table and chairs were furnished in good order, and I never heard of any difficulty about the allowance of the bills by the board of supervisors. I pursued the same policy in Madison and several other counties of the district, and never heard that I lost favor with anybody because I insisted on having a decent court.

On the 3d of March, 1866, at a subsequent term of the court held in Warren county, Mr. Thomas F. Withrow, an attorney of the Polk county bar and my neighbor, came into court one morning just before noon in company with John A. Kasson, then a representative in congress from this district and a resident of the city of Des Moines. Mr. Withrow filed with the clerk of the court a petition for divorce in behalf of Mr. Kasson's wife, and asking for a divorce on the grounds that Mr. Kasson had been guilty of adultery. To this petition Mr. Kasson filed an answer admitting his guilt, and both parties asked for an immediate hearing of the cause. I dismissed the jury then impaneled and announced that the court would not adjourn but remain open for business, asking the clerk and sheriff to remain, and that the bystanders and others were at liberty to

retire. I read over the papers carefully and told Mr. Withrow that I could not grant the petition upon the answer; that if he had any evidence it must be produced in open court as I must be satisfied of the existence of the facts alleged in the petition. Mr. Withrow said he had the letters of the defendant written to his wife from time to time, fully acknowledging his guilt, and he would return to the hotel and get his satchel containing these letters and produce them in open court if I required it. Mr. Kasson then begged of Mr. Withrow not to produce those letters, and turning to me said he would himself be a witness as to the facts and thought that ought to be sufficient. I told him I could not grant a divorce that would have the appearance of being granted merely upon the consent of the parties, that I wished to be satisfied fully that there was no collusion in the matter between himself and wife, and that he was in fact guilty as charged. He assured me that there was no collusion, that the charge was actually true and that the facts actually existed as charged against him. At this he broke down and professed almost to cry, and I told Mr. Withrow to prepare the decree of divorce. It was accordingly prepared, reciting that it was granted upon evidence of the truth of the allegations of the petition, and I accordingly signed the decree.

Upon my return to Des Moines at the close of the session, the legislature then being in session, I was waited upon by one or more members of the general assembly, suggesting that there was a rumor that the divorce of Mr. Kasson's wife had been procured and granted simply by consent of parties, and they proposed to introduce a bill for an act to prevent such divorces in the future. I explained that the rumor was entirely unfounded and that the divorce had been granted upon satisfactory evidence offered in open court. I recite these facts at some detail because of their importance with reference to results, and what occurred that fall, 1866.

Mr. Kasson was a candidate for re-nomination to congress. The opposing candidate was General G. M. Dodge, then a resident of Council Bluffs. I did not take any active part in this

contest further than to express my preference for General Dodge, and that I could not consistently, with my views of propriety, support Mr. Kasson under the circumstances. When the conventions were held that fall for nominating delegates to the convention that should nominate congressmen, district judge, and prosecuting attorney, the Polk county convention, being under the control of Kasson's friends, nominated the same set of delegates to attend both the congressional and the district conventions. After very heated contests in the convention for nomination of congressmen, Mr. Kasson was defeated, and I was informed by the delegation that they would not support me for the nomination for district judge because I had refused to help them in the matter of nominating Mr. Kasson. The next day when the convention met for the nomination of judge and district attorney I went before the convention in person and withdrew my name from the convention, stating as a reason therefor that I could not with propriety be a candidate before that convention without the support of the delegates from my own county. The convention nominated Mr. Maxwell, then district attorney, for judge. My office did not expire until the ensuing January, but I at once sent my resignation to the Governor of the state, thus terminating my judicial career on August 1, 1866.

In this contest for congress, Mr. H. M. Hoxie and Mr. Thomas F. Withrow, formerly warm friends and supporters of Mr. Kasson, had abandoned him and were active supporters of General Dodge.

Upon my retirement from the bench, the members of the Polk county bar had a meeting and adopted very complimentary resolutions which they had enrolled and were kind enough to present to me as a testimonial of their approval of the manner in which I had discharged my duties as judge of the court.

The salary of judge of the district court at that time was the meager sum of thirteen hundred dollars a year, out of which I paid my own expenses on the district. During my

term of office as Attorney General I had spent a considerable part of my income in attending public meetings and traveling through the state, addressing public assemblies upon the issues growing out of the war. I had not accumulated sufficient means to pay for my homestead and I now determined, as far as practicable, to devote myself to my practice as an attorney and accumulate something for the future.

During the administration of Governor William M. Stone, his private secretary had endorsed a number of warrants issued by the Treasurer of the United States in favor of the state of Iowa, known as "swamp land warrants." Governor Stone had entrusted the detail of the business of his office to his private secretary. These warrants came into the hands of the secretary and he assumed the responsibility of endorsing the Governor's name upon them from time to time, and having them cashed at the Second National Bank. At first he paid this money over to the State Treasurer, but as no inquiry was made as to the transactions and Governor Stone was paying but little attention to the details of business in the office, he cashed a number of these warrants and appropriated the money to his own use and purchased considerable real estate in his own name.

On the first of January following, these transactions became public and the Governor repudiated the authority of the secretary to make the endorsements upon the drafts. He procured from the secretary mortgages upon considerable of the property purchased by him to secure so much of the proceeds of these drafts as remained unaccounted for. The grand jury indicted the secretary for a number of these transactions for forging the Governor's signature. This secretary applied to me through Mr. Withrow, about the time of my resignation as judge, to employ me as counsel to assist in his defense. The secretary had no money or means to pay me for my services and as he already had able and efficient counsel, I declined the employment.

About the same time suits were brought to foreclose these

mortgages given by the secretary, and also to hold the bank responsible for the moneys that had not come into the hands of the State Treasurer. Pending these suits of a civil character, by agreement of the parties and their counsel, the case was referred to me as referee. During the summer I occupied several weeks in taking the testimony carefully before a stenographer and reported the same with my conclusions of fact and law to the district court, which report was confirmed by the district court and upon appeal to the supreme court by the secretary, that court also affirmed my decision, and under these judgments the property was sold and the state partly remunerated for the loss.

Governor Stone also solicited me to act as special prosecutor in prosecuting the indictments against the secretary for forgery, but in consideration of the fact that the secretary had failed to obtain my services in his defense because of his poverty, I declined to take any retainer or part in the prosecutions.

I only recite these matters here because the secretary for his own purposes saw proper to make a number of virulent attacks upon me in various scurrilous articles that he published. As he was a man of no reputation and soon after left the state and died in obscurity and poverty, it is not necessary here to notice them.

The indictments against the secretary were never tried, I think, for the reason that the trial would necessarily have exposed the fact of the Governor's carelessness and inattention to the detail of his official duties. The Governor was otherwise not to blame for these unfortunate results and was himself free from any taint of dishonesty or corruption.

Notwithstanding my determination to retire from politics and devote myself entirely to the practice of law, the republican state convention, in the fall of 1867, without any procurement or solicitation upon my part, selected me as chairman of the state central committee. I conducted the canvass that resulted in the election of Colonel Samuel Merrill. The

entire cost of this canvass, including the employment of a secretary to the committee, was only the sum of $800, one-fourth of which the candidate for Governor contributed. I make note of this, for the reason that in later years, and at the time of the present writing, these central committees of the states and of the nation, are expending thousands and hundreds of thousands of dollars upon the election of the candidate of their party.

I also at the time I was chairman of the state central committee, furnished a team to Messrs. Thomas F. Withrow and F. W. Palmer, the latter then editor of the *Register*, to make a political canvass through the western half of the state. The very next year, 1868, Mr. Palmer became a candidate for congress in this district, Mr. Kasson being again a candidate for a seat in congress and again defeated in the nomination. I attended the congressional convention which was held at Council Bluffs that year, and was well satisfied with the result.

In the summer of 1869 Judge George G. Wright, before that time one of the judges of the supreme court of the state of Iowa, and who had removed from Keosauqua and become a permanent citizen of Des Moines, called upon me to confer with me upon the subject of his election to the United States Senate. He was fearful that Mr. John A. Kasson, who had been a member of the house of representatives of the state the last previous session, would be a candidate for the state senate. He expressed himself as having no confidence whatever in Mr. Kasson's friendship toward him, and he desired me to be a candidate and seek the nomination for the position of state senator. I peremptorily declined, for the reason that I did not want to engage in any political fight or difference with Mr. Kasson, and I could not afford at that time to leave my practice for a place in the state senate. Judge Wright insisted that he must have a friend in the senate from Polk county upon whom he could rely, and urged me to name some one who could be nominated and elected. After canvassing the names of several gentlemen, I suggested the name

of B. F. Allen, then the leading banker in western Iowa, giving as my reason for urging Mr. Allen's name that the friends of Mr. Kasson would not present Mr. Kasson's name in opposition to Mr. Allen at that time, and the further reason that the people of Des Moines would at the then coming session of the general assembly ask for an appropriation to commence the building of a permanent capitol, and that Mr. Allen by virtue of his influence through the western part of the state especially could probably do more than any other man to secure such an appropriation. Judge Wright replied that the name of Mr. Allen had been suggested, but that he was satisfied that that gentleman would not accept of the nomination because his business required his undivided attention. I suggested to Judge Wright that I thought I was better acquainted with Mr. Allen than himself, and that if a number of our friends would call upon Mr. Allen, one at a time, suggesting and urging him to be a candidate for the senate, in less than ten days he would not only be willing but anxious to receive the nomination. We accordingly pursued that course, and my prediction was verified. Mr. Allen became a candidate and received the nomination, but this did not prevent Mr. Kasson from again being a candidate for the nomination to the lower house.

At the ensuing session of the legislature the desired appropriation for a permanent capitol at Des Moines was secured and Judge Wright was elected to the United States Senate, defeating William B. Allison who was then, for the first time, a candidate for that position.

Mr. Kasson worked diligently to secure the appropriation for the capitol, as did also Mr. Allen in the senate and George W. Jones, Mr. Kasson's colleague, in the house.

The citizens of Des Moines were very deeply interested in this appropriation for the permanent capitol, and every one, including the ladies, brought to bear all proper influence upon the members to secure their votes for it. The great event of the winter socially was a grand party given by Mr. Allen

in the splendid mansion which he had just finished, situated on Terrace Hill, now the property of Mr. F. M. Hubbell. The ladies of the town also gave an old fashioned concert at Moore's Hall, and an amateur theatrical performance at its close, of which I had the honor to be the author. The play was a farce illustrating the absurd features of a general assembly of the state of Iowa whose members were one-half ladies and the other half gentlemen. The play represented a session of the general assembly of the state of Iowa in the year 1900. The old capitol building, then occupied by the legislature, was supposed to have fallen down and to have killed a number of the members of the sitting general assembly, and one of the bills discussed by the mock legislature was a proposed appropriation for the benefit of the surviving families of the members who had lost their lives in the destruction of the old capitol. The great discussion arose upon a motion to strike out the sum of sixty-two and one-half cents, and many of the speeches that had been made against the appropriation for the new capitol upon the question of economy were largely quoted from, by those opposed to the sixty-two and one-half cents.

Another point made in the play was that upon the question of woman's rights. Dubuque county was supposed to be represented by a lady weighing over two hundred pounds, and her husband, a dwarf, then residing in the city, who weighed about seventy pounds. Whenever a vote was taken upon any question respecting the rights of their sex the legislature divided, the men voting on the one side and the women always on the other. The lady who was supposed to be the wife of the dwarf, whenever a rising vote was taken upon a question of this nature, seized her supposed husband by the coat collar and tried to compel him to stand up and be counted on the side with the ladies. The frantic efforts of the little fellow to desist and to vote with those of his own sex created uproarious applause and amusement for the audience, as did also the following part of the play:

The lady supposed to be the wife of the dwarf arose and addressed the speaker upon a question of privilege. She said she had just received a telegram from home, stating that her youngest child was taken suddenly ill, and she requested the house to grant leave of absence for her husband, as it was very desirable that he should return home and care for the sick child. Another member of the house, a gentleman, arose and inquired whether the sick child was a boy or a girl. The lady responded with some acrimony that all her children were girls of whom she boasted she had seven, and was proud of it.

The ladies of the city entered into this play with much spirit and performed their parts so admirably that it furnished a very rich entertainment for the winter.

The bill making the appropriation for the erection of the permanent capitol finally became a law, and Mr. Kasson attempted to monopolize for himself all the glory of the achievement. He had a brass band serenade him at his house, and John P. Irish of Iowa City make a congratulatory speech to him as the hero that had accomplished so much for the city of Des Moines.

In the year 1874 Mr. Kasson was again nominated as the republican candidate for congress and was successful in the election. In this contest he was opposed by the then editors of the *Register*, a newspaper at that time published by the Clarkson brothers.

In the early part of September, 1874, Mr. J. C. Savery, a citizen of Des Moines at that time, and for several years a client of mine, called upon me and showed me several letters in manuscript, relating to Mr. Kasson's conduct while a member of the legislature of Iowa, and while a member of congress, and stated that he proposed to publish those letters as he was opposed to Mr. Kasson's election. He asked my advice as his attorney as to whether or not there was anything in the letters that would make him liable to a civil suit for damages in case of their publication. I advised him that if the letters were published and any suit was brought against him

it would be necessary to show either the absolute truth of them or that they were published from proper motives and that he had a good reason to believe that the statements were true. As Mr. Savery had been my friend and client, and had not been at all prominent in political life, I advised him as a friend not to mix up in the contest and not to publish the letters, as he was a private citizen having no special interest in the question as to who would or would not be elected to congress. He, however, determined that the letters should be published and he gave them to the *Register* for publication. These letters were a very severe arraignment of Mr. Kasson's political career, and he thought proper to commence suit in the district court of Polk county against Mr. Savery and the editors of the *Register* for libel. Such a suit was brought October 21, 1874. Mr. Savery requested me to meet Mr. Clarkson for the purpose of consultation and with a view to my employment, in connection with Colonel Gatch, to defend the suit. I stated to them that the trial of the cause would involve a good deal of labor and time, that in the then state of political excitement, it would be very difficult to obtain a favorable result as the partisans of Mr. Kasson, if they secured a place upon the jury, would hardly give much weight to the testimony that might be produced. I signified, however, that I was willing to take the employment, provided I was paid liberally for my professional services. To this Mr. Richard Clarkson demurred very strongly, insisting that as Mr. Kasson was at least a political opponent and enemy of mine I ought to be willing to defend their case for an opportunity to ventilate the character of the plaintiff in the suit. I stated to Mr. Clarkson that if I engaged in that suit it would be for the purpose of performing my duty as an attorney and officer of the court, and that I should under no circumstances allow any personal matters of my own to influence what I might have to do or say in regard to the case; that the court room was not the place for a lawyer to gratify his personal feelings toward any of the parties to the litigation.

This conference terminated without any agreement as to my employment. Afterwards, Mr. Savery came to me to see me alone and stated that Colonel Gatch had named a very small sum that he was willing to accept as compensation for assisting in the trial of the case. Mr. Savery urged upon me that he was then in poor circumstances financially and not able to pay any large fee; that he had been my client and paid me considerable sums of money in times past and urged upon me that I ought to stand by him now in the time of his trouble; that if I would accept of a like amount that Colonel Gatch had agreed to take for his services, he, Mr. Savery would pay half, and the Clarksons would pay the other half. I finally agreed to these terms. I tried the case. It consumed very considerable time in its preparation and trial. I copy here for information as to the character and scope of this case the opening statement that I made to the jury in regard to the issues involved, and the evidence that the defendants would offer in support of their defense. I always regarded the opening statement of a case as very important and that it should give to the jury a clear idea of the case they were to try, and of the facts upon which my client relied. I always believed strongly in the importance of first impressions, and I give this as a specimen of my skill in that behalf and for the further purpose of showing that it is utterly free from personal feeling or ill will toward the plaintiff. The following is the opening statement as made and reported and published at that time:

With permission of the Court, Gentlemen: In a case like this, it is hard for jurors to divest themselves entirely of their relations, politically and socially, to parties, and come to the consideration of it as a dry question of fact under the instruction of the court.

The petition that has been read to you selects from certain articles that were published during the political canvass last fall, three certain items of charges made against Mr. Kasson that it is supposed by Mr. Kasson and his friends cannot be proved. Why those three particular charges out of quite a number should have been selected and the others passed by, I do not know. Probably any one of the other charges

damaged him as much as any one of these. But for some reason best known to the plaintiff, he has been willing to stand all the injury and all the damage they did; because he didn't care about having them investigated in court. (He has a right to pick out and say this one is not true, and the other is not true, I put you on the proof of this.) These three particular charges are set out, and they claim so much damages for saying these particular things about this particular individual. The answer I will read to you and then try to give you some idea of the evidence that will be introduced on the part of the defendants. [Here Mr. Nourse read the answer relating to the first charge, and continued.]

The facts are, these articles were written by Mr. Savery, and published in the *Register*, which was conducted and published by the defendants, Mr. R. P. Clarkson and Mr. J. S. Clarkson.

[Reads from petition again, beginning with the words: "Now, sir, this was the way you played your hand."]

Mr. Nourse continued: That is the answer we make to the first charge, relating to what is called the Smoky Hill route. I will say, in order that you may understand the evidence, and the facts in reference to that business, that Mr. Kasson was our member of congress in 1866, as will appear by the testimony, living and residing in this town, having for his colleagues Messrs. Price, Wilson, Allison, Judge Hubbard, and Mr. Grinnell. At that time one of the most vital questions to the people of Iowa, especially to the people of this congressional district, was whether or not the roads running east and west through Iowa should connect with, and become a part of the great Pacific route, extending from the Atlantic to the Pacific ocean. Prior to 1866 congress had passed a law to aid the construction of the Pacific Railway. That law provided for several Iowa branches, and provided for a branch connecting with the St. Louis roads through Kansas, and provided that all these branches should unite at what is known as the one hundredth meridian, some distance west of Omaha. And a further provision in that bill was that the Union Pacific Railroad Company should build from the one hundredth meridian westward, meeting the road that should be built from California eastward. That was the Union Pacific Railroad proper. It will appear in evidence, gentlemen, that Mr. Kasson, up to the very moment, the very day and hour on which he gave this vote in congress, had publicly and privately expressed himself in favor of the Omaha route, and delivered a public lecture against the

Smoky Hill route, and explaining to the people of this locality the great advantages they were to derive from being upon the main line of this great thoroughfare. It will further appear in evidence, gentlemen, that the Kansas company, with the Pennsylvania Central road — in combination with the St. Louis interests — devised a scheme, in the winter of 1866, whereby they proposed to make the Kansas road, connecting with St. Louis, the main branch of the Pacific road, and thus entirely defeat the building of the roads westward to the hundredth meridian, connecting with the Iowa roads. That was the scheme that was undertaken, and a bill having that object was rushed through the senate and came to the house of representatives, when Thaddeus Stevens took charge of it. The friends of the bill made a strong combination, refused to let it be referred to a committee, and refused even to allow it to be printed for the information of the house, and put it upon its passage under the spur and whip, crushed out debate, and crushed out explanation and discussion. Mr. Kasson was the only member of the house of representatives from Iowa that was permitted by Thaddeus Stevens, who had the floor, to occupy the time of the house, and to the surprise of everyone Mr. Kasson was found to have gone over to the enemy. We have the depositions of Hiram Price and James F. Wilson, and the *Congressional Globe* that will explain to you his false position. Mark the explanation Mr. Kasson attempted to make on the floor of congress. He based his defense simply on the claim that the Kansas branch road would make a *rival road* and afford competition.

This, gentlemen, will appear in evidence when we come to investigate this matter. It does not answer the proposition and but for the fact that the money was speedily raised and the road built from Omaha to reach the hundredth meridian, before the Kansas branch got their road built there, we would have lost everything; we would have lost all that congress had granted to us, to build the road up the Platte Valley. This has been carefully concealed by Mr. Kasson in all his explanations and in all his discussions and he has, with his oily, deceptive subterfuges, tried to hide this enormity of his past life from his constituents. We hope, gentlemen, aided by the evidence of these members of congress, intelligent men, honest men, who have stood by the people of Iowa — we hope, with their depositions and the circumstances, and the evidence contained in the *Congressional Globe*, to show this matter up to you. We will prove to you by men who were on the ground that no sufficient motive could honestly have induced that man

to have cast his vote in the way he did; that it was a surprise upon every intelligent man that knew what his pledges and promises and professions had been up to that time. Now, when this man offered himself as a candidate for congress last fall a year ago, one of the defendants in this case, who never was a candidate for office in his life, who had no interest in politics whatever, except as a citizen interested in our material interests, in our city, in our state, took the responsibility upon himself to ask Mr. Kasson through the public press to explain this, his extraordinary conduct and his treachery to his constituents; he got no answer except the insufficient one, the deceptive one, that Mr. Kasson wanted a rival railroad. Again, gentlemen, it will further appear in evidence that this was an additional subsidy of lands, that instead of connecting with the main line at the one hundredth meridian, this Kansas company was authorized to change its route and build the road to Denver, from Denver up to Cheyenne, and receive all the lands on either side of whatever route they may fix upon, and not requiring them to unite with the main line until they got fifty miles west of Denver. That they received on the line from Denver to Cheyenne the heart of the Territory of Colorado. That was a subsidy, and that the road got that subsidy, and that the parties who passed the bill undertook to deceive the members of congress in regard to it.

Now, gentlemen, this is all there is on this first matter. This publication was made, public attention was called to the fact that one of our members of congress, when asked how he would explain Mr. Kasson's vote, said he didn't know; but he could have taken twenty-five thousand dollars for his vote. That statement was made public by Mr. Savery in this communication to the citizens of this congressional district. Now this is the first matter which Mr. Kasson has chosen to bring before you, and to make an issue, and claim for damages to his character. Now we cannot prove — Mr. Kasson knows — we have no facilities for proving who was around there, or what money they had, or the means by which that bill was passed by congress. We can show you, gentlemen, only this one thing, that as a citizen of Iowa and as a representative of Iowa he betrayed his constituents wantonly; that he was in a scheme in which there was money; that is all; that this communication was made to the public, stating the bare facts at a time when it was necessary for the public to know them and by a man who had no interest in maligning Mr. Kasson, or injuring him. Savery had

no personal feeling, and had no personal animosity towards him, but he felt, as a citizen, some indignation towards the man for the course he had pursued in congress. So much, gentlemen, for the first charge that was made. You are to judge whether that communication at the time it was made, and under the circumstances it was made, was justifiable. You are to take all the facts, and all the testimony with regard to it. Now as to the second matter that is set out in the answer.

Mr. Barcroft: Will you just tell the jury whether the bill that Mr. Kasson voted for under the Iowa Railroad were not built on the continuous line?

Mr. Nourse: I have already stated, that but for the extraordinary efforts by which money was raised, and the road pushed to the hundredth meridian first and this scheme defeated, we would never have been on the main line. But no thanks to Mr. Kasson for it. We are on the main line because these men went to work with superhuman energy to get to the hundredth meridian first, and they got there first, and that is the reason we are on the main line. If we had not reached it before they did, we would not have had a dollar of money with which to have built our line, and the other would have been the main line. That is the fact as it will appear conclusively from the testimony in this case. Gentlemen, I invite your special attention to the second charge, for if I can succeed in getting the jury to understand this question it is the end of the plaintiff's case. Fortunately for us on this question we have pretty conclusive proof, and with all the gentleman's ingenuity and that of his counsel, he will not be able to escape. We will show you, gentlemen, that in the year 1868 the old Des Moines Valley Railroad Company had forfeited her rights to the grant of lands that had been granted to her in the year 1858, by reason of not building the road as the original act required. The people of Boone county were dissatisfied because the Des Moines Valley Railroad Company had surveyed their road west up by Grand Junction, instead of going up the Des Moines river. Mr. Orr introduced a bill called the resumption bill, No. 139, in the house of representatives. That bill was read the first and second times, was ordered to be printed, and was referred to the railroad committee, of which Mr. Kasson was a member. The railroad committee prepared a substitute for that bill, as is set out here, in which they provided for a release of the company from all forfeitures and still allow them to have the lands and to build their road upon certain terms and conditions, and reported that bill back to the house

of representatives as a substitute for house file No. 139. That substitute, gentlemen, is in Mr. Kasson's own handwriting, and we will be able to produce it here and show you the bill as he reported it originally to the house of representatives.

The records will show you, gentlemen, that after that bill came in, after this substitute was reported, Wilson of Tama county, with another gentleman constituting a minority of the committee on railroads, made a minority report in which they recommended what was called the "Doud amendment," or the Granger clause of that bill, in which they provided as set out in the answer: "that the company accepting the provisions of this act was at all times to be subject to legislative control." I will give you the very language of the amendment as it now appears in the law, so you may get the idea fully. [Reads.] "The company accepting the provisions of this act shall at all times be subject to such rules, regulations and rates of tariff for transportation of freight and passengers as may from time to time be enacted by the General Assembly of the State of Iowa." The minority of the committee recommended that amendment, and it was adopted; and it was the only amendment that ever was adopted by the legislature.

We will prove to you, gentlemen, that a forgery was committed, and the following words interpolated into that bill: "But the non-acceptance by the Des Moines Valley Railroad Company of this act shall not prevent all the foregoing provisions thereof from having the same operation and effect as if the same had been accepted by said company;" and we will prove to you that these words were agreed upon between Mr. Kasson and the railroad company's attorney, in a private room in the Savery House, and that he agreed to put them in the bill, and the attorney testifies that the provision escaped criticism. And this is the second charge: We charge him with so manipulating that bill as purposely to defeat the will of the legislature. That he did it fraudulently, and that he did it corruptly will be proved to you beyond a doubt; that this charge was made, honestly believing it to be true, in order that the people of this congressional district might know the character of the man that was asking for their suffrages. After he voted against Wilson's amendment, and failed to honestly defeat it, we are prepared to show that by an agreement between him and the general attorney of the road, he undertook to get this nullifying clause into the bill, and that he did get it in the bill, and that he did not get it there by the vote of the house.

Mr. Barcroft: You do claim that you have any such allegation in your answer?

Mr. Nourse: I claim that what we charge Kasson with was that he manipulated that proviso through the legislature, and we propose to prove it. We propose to prove that it came *from him* and originated *with him*. We may have other evidence on this point more full and complete that it is not necessary now to take the time to detail.

The third specification, gentlemen, relates to the vote of Mr. Kasson and his conduct with reference to the C., R. I. & P. R. R. Co. And here, fortunately, I can say to you that we are not without direct and satisfactory testimony. We thought that we could prove that he had taken money on both sides from both parties in the case, but we haven't succeeded fully. We have evidence, however, of this state of facts: That Mr. Kasson in the early part of that session voted for a bill that had for its purpose and object the helping of Tracy, who was then the president of the road, to retain his power and his place as president, and to complete the road from here to Council Bluffs; that a bill for that purpose was passed in the early part of the session and approved on the 11th of February, and that Mr. Kasson voted for it. Thus far all was right. It will further appear by the evidence that the legislature had a recess of a few weeks after that, and that Kasson disappeared from here and turned up in Wall street, New York; that he was found in conference with the men connected with the Northwestern Railroad and who had bought up the stock of the Rock Island road, with a view of obtaining control of it, who were anxious to secure the repeal of the Tracy bill. We will prove to you that Kasson promised these men his influence to have that bill repealed; that he came back to Des Moines and was in conference with them, promising them his aid, that he subsequently changed his mind and abandoned them, that they didn't succeed; and that Mr. Tracy out of sheer gratitude, as Kasson claims, offered him five hundred dollars in money; that he (Kasson) took the money, but stipulated that it should be called a retainer.

In his own deposition Kasson swears he got the money. But he says he didn't get the money until after the legislature adjourned, and when it was offered to him as a present, he said he couldn't accept of it unless it was offered to him as a retainer; and that Mr. B. F. Allen, who offered him the money, went away and came back again, and said that he could take it as a retainer; and that he supposed that

Allen had seen Mr. Tracy. This is the way Kasson gets out of this. We will prove to you by Mr. Tracy that he never had retained Mr. Kasson, or authorized anybody else to retain him for the company; that he never requested Kasson to perform any professional services for that road; that he never performed any professional services for the road, and that he had been out of the practice of the law for years. It will further appear in evidence that Mr. Kasson has not practiced law since 1860; that this attempt to make it a retainer is simply a subterfuge to cover up the taking of pay for his services in the legislature, to a railroad corporation. Now, this all came to the knowledge of these defendants, and they proposed, in good faith, to publish to the community the facts in regard to Mr. Kasson's conduct. It is said by plaintiff's attorney that they will show to you that the Clarksons were the personal enemies of Mr. Kasson. I will say to you, gentlemen, that it is not true, and that I don't believe they will prove it; I don't believe in this community they can prove a thing that is not true. On the contrary, the Clarksons never had any personal or political difficulty with Mr. Kasson whatever. Every motive on earth that could induce men to act through favoritism was upon the other side of the question.

Mr. Kasson had no desire to face his accusers, or subject himself to an examination before the jury. He was not present at the beginning of the trial and had taken the precaution to have his own deposition taken in New York upon interrogatories doubtless prepared carefully by himself, as the interrogatories disclosed nothing as to the explanation he had invented for the purpose of rebutting the testimony against him. This would avoid any cross-examination.

After the defendant's testimony had been introduced in part, however, the evidence seemed to make quite an impression against the plaintiff's cause and his counsel in desperation telegraphed to him requiring him to come at once to Des Moines. After a few days, he put in his appearance and I immediately had a subpoena issued and served upon him, requiring his attendance as a witness. After we closed our evidence, Mr. Kasson disappeared between two days and we searched for him in vain in the state. His counsel, Mr. Barcroft, offered his deposition taken in New York, then as re-

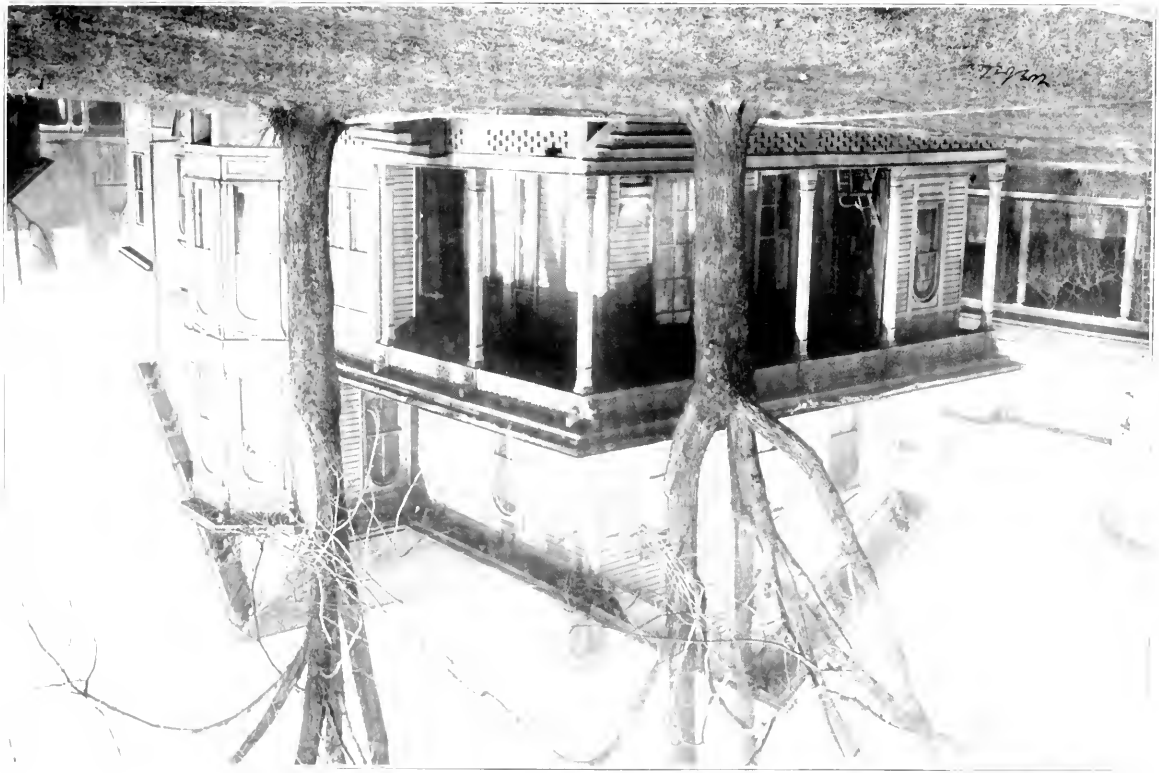
butting testimony, when the following colloquy occurred, which I here quote from the notes of the official reporter:

Judge Nourse, for the defense, asked to have Mr. Kasson brought into court, stating that a subpoena had been issued for him, and as he was not present, asking an attachment for him. Mr. Barcroft replied: "Whether he will be here or not, I don't know. I think he is out of the state. I don't know that he will be here, and I don't know that he will not, but think the probabilities are that he will not. We don't claim the right to read his deposition if he is present. He is not present, and is not in the state. I don't expect him to be here."

The deposition was then read.

As already anticipated, the jury could not agree upon a verdict. Six of Mr. Kasson's political friends upon the jury insisted on finding in his favor, and six who were not his political supporters and friends, some being democrats and some republicans, insisted on not finding a verdict in his favor. The case went over the term and was afterwards compromised upon what terms I never understood, except that the plaintiff dismissed his suit and probably paid the costs, and Mr. Savery advised me that as part of the terms upon which the suit was to be dismissed, Mr. Kasson was to make a political speech at Moore's Opera House and Colonel Gatch and the Clarksons were to occupy the platform as indicative of their friendly appreciation of that gentleman, and I also with Mr. Savery was entitled to a like honor. Mr. Savery did not appear upon the platform and I utterly refused to recognize the right of anyone to contract for my appearance there, and I was conspicuously absent.

Mr. Savery paid me his half of the fee that I was to receive for my services, and upon presenting my bill for the other half to Mr. Richard Clarkson, I found he had charged me up for printing the speech I had made to the jury, having at my request printed the revised copy of the speech in pamphlet form, and thus he squared the account, never paying me one cent for my services in the case.



CHAPTER V

Some Important Law Suits

It is not within the scope or purpose of this writing to enter into or discuss the merits of the various suits in which I was employed. I cannot, however, give any idea of the fifty years of my life during which I was engaged in a number of important suits, without reference to their nature and character, and the management to which I attributed important results.

In the latter part of the year 1864, whilst in attendance at the supreme court at Davenport, I was retained by the Chicago & Northwestern Railroad Company, in company with Mr. Thomas F. Withrow, to assist the general counsel of that corporation in a suit, then recently brought in the United States circuit court for the southern district of Iowa, enjoining the company and its agents and employees from putting a certain span of their bridge across the Mississippi river at the town of Clinton, Iowa. Mr. James Grant of Davenport and a Mr. Lincoln of Cincinnati had been employed by the river interests to prevent the completion of this bridge on the ground that it would prove an obstruction to the navigation of the river. Mr. Withrow and myself spent a day in examining the alleged obstruction to navigation, the company furnishing us a steamboat in which we passed through the piers on which the drawbridge was to be placed. We returned to Des Moines late Saturday evening. The United States circuit court at Des Moines met the following Monday. On Sunday Mr. Withrow went to his office and carefully examined the statutes of the United States relating to the powers of the court in granting injunctions. He sent for me in the afternoon. On examination we ascertained that the

statute of the United States contained a peculiar provision, not known to the practice in our state courts. It provided that when an injunction was granted in vacation by the judge of the district court of the United States, it should remain in force only until the close of the ensuing term of the circuit court; that if the injunction was granted by one of the judges of the supreme court or a judge of the circuit court of the United States, it should remain in force until it was dissolved by the order of the court. We immediately opened telegraphic communication with General Howe, who was then attorney of the Chicago & Northwestern Railroad Company, and had in charge the defense of the case. He and Judge Grant, it seems, had been engaged in taking depositions and procuring evidence with reference to the question of obstruction of the navigation by the existence of these piers in the river, and both General Howe and Mr. Grant appeared to be acting upon the hypothesis that it was necessary for the defense to make a motion and showing for the dissolution of the injunction. We called the attention of General Howe to the provisions of the United States statute, and as we were well acquainted with the peculiarities of Judge Grant we advised that if we did nothing upon the part of defense at the ensuing term of court, it was probable that Grant would take no action in the matter and the injunction would stand dissolved at the close of the term by operation of law. On examination of the question General Howe agreed with our conclusions, and we then arranged that he take the train on Monday morning and come as far as Ames, Iowa, bringing with him all evidence, depositions, and papers that we might need in case there was to be any hearing before the court; that General Howe should occupy a box-car at Ames and not subject himself to personal observation, whilst we would take charge of the interests of our client at Des Moines and do nothing save to let the law take its course, and we would advise General Howe by telegram if Judge Grant woke up and attempted to obtain any order of court continuing the injunction. Judge Grant was in attendance up-

on the court, and several times inquired after General Howe, stating that he was expecting him daily. Day after day of the term passed and nothing was done. Finally, the business of the term being disposed of, Justice Miller, then justice of the supreme court of the United States and presiding, announced that if there was no further business before the court the term would be adjourned. Judge Grant addressed the court and stated that he had been waiting during the entire term expecting the appearance of General Howe; that he understood that Messrs. Nourse and Withrow had been employed in behalf of the defendants, but no motion had been filed with reference to the injunction in the case against the bridge company or railroad company, and he wished to know whether or not we intended to do anything. Mr. Withrow looked at me and placed upon me the responsibility of replying to judge Grant's remarks. I said that it was true that Mr. Withrow and myself had been employed in the case, but only as local counsel and the only authority we had was to act under the instructions of the general counsel of the railroad company, General Howe; that we had no authority or direction to file any motion in the case, and I added very meekly that if any harm should come to our clients by reason of any neglect in the matter the responsibility would rest entirely with General Howe and not with my Brother Withrow and myself. Upon this Judge Grant announced that he had to go to Washington City upon professional business immediately upon adjournment of the court, and he would not consent that any motion would be heard in regard to the injunction matter in vacation. This closed the event and the court adjourned sine die. As Judge Miller passed out of the court house down the stairs, Judge Grant having previously left the room, Mr. Withrow could hardly contain himself and burst into uproarious laughter and attracted the attention of Judge Miller, who looked over his shoulder and remarked good-naturedly that he supposed Judge Grant did not understand us. As previously arranged, the mechanics engaged in the bridge construction had carefully

prepared their timber and every bolt necessary for the span that should make up the drawbridge between these two piers. Judge Grant went his way to Washington, and upon his return to Iowa three weeks afterwards he found the cars in operation crossing the bridge. He immediately went to Judge Love, and making the necessary affidavits for contempt of court, obtained warrants for the arrest of the parties engaged in constructing the bridge. Without disclosing what our knowledge and view of the law was upon the subject, the parties at once gave bond and security for their appearance at the next term of court to answer the charge of contempt. When the next term of court convened, Justice Miller and Judge Love presiding, I made the necessary motion to discharge the defendants upon the ground that the injunction had been dissolved by operation of law immediately upon the adjournment of the prior term of court, and there being no injunction in force, the completion of the bridge did not constitute any contempt of court. The motion was sustained and the defendants discharged.

Judge Howe and Judge Blodgett of Chicago were so delighted with the result, that they telegraphed to Chicago for a case of wines and inviting Judge Grant and Mr. Lincoln of Cincinnati, who represented the plaintiffs in the case, into our room, we spent a very merry evening together and all seemed to enjoy the evening save Judge Grant who could hardly forgive himself for his over-confidence which had resulted fatally to his clients.

During the evening many excellent anecdotes were indulged in: among others was one by Judge Blodgett for the benefit of plaintiff's counsel. He said in the early history of the lawyers who were in the habit of traveling the circuit in Illinois, they had a gentleman come among them who would never admit that he had made a mistake. The attorneys were accustomed to amuse themselves in the evening at the hotel, and among other amusements they had a game called "kicking the slipper," which consisted in inducing some green victim to

put a slipper upon one foot and attempt to throw it into the air and kick the slipper with the other foot before it reached the floor. One evening they induced the over confident attorney to undertake the experiment, with the result that he came flat upon the floor in the attempt to kick the slipper with the other foot. The other lawyers thereupon greeted him with a hearty round of laughter, but he sprang to his feet and said to them, "Now, gentlemen, you needn't laugh, you needn't think you fooled me, for I want you to understand that I had no sooner struck the floor before I understood that it was a trick." Mr. Lincoln was a merry, good-natured man and enjoyed this anecdote at his expense very much, but Judge Grant hardly saw the application of Judge Blodgett's anecdote.

At the next session of congress the railroad company obtained the passage of a law constituting the bridge a part of the mail route of the United States, and the court subsequently dismissed the plaintiff's case. Thus we were successful in gaining our case by knowing when it was best to do nothing. The use of the bridge was invaluable to our clients, and the railroad company sent me a draft for two hundred dollars as compensation for the short speech I had made advising Judge Grant in the court that we had no instructions to do anything in the case, and the responsibility of our failure to do anything, if injurious to our client, would rest with General Howe, attorney in chief of the road.

Whilst upon this question of management I will give you an account of another case of some importance that resulted in our complete success because we did something that we did not learn out of any of our law books.

A certain young woman in the last stages of consumption had been turned out of the house of her near relatives, and compelled to take up her quarters in a second-class hotel in Des Moines during her last sickness. She had made a will in which she willed to the Catholic priest of the city, Father Brazil, a valuable tract of land for the use and benefit of the Catholic church. After her death her relatives, who had neg-

lected her shamefully during her sickness, brought suit to contest the validity of this will upon the ground of undue influence on the part of Father Brazil, and mental incapacity on the part of the deceased. Judge Kavanaugh, a young bachelor then about thirty years of age and a member of the Catholic church, and since then judge of the court in Chicago, Illinois, had been employed by Father Brazil to defend the suit, and he subsequently came to me and retained me to assist him in the trial of the cause. During the sickness of the deceased she had employed a professional nurse, a young woman about thirty years of age. We were informed before the trial came on that the relatives who were contesting the will had been very courteous and kind and generous toward this young nurse woman, and during the holidays had made her valuable presents in consideration of her kindness to the deceased. At the opening of the term I noticed this young woman came into court, receiving the courtesies and attention of Judge Cole, who was counsel for the relatives that were contesting the will. She was rather a handsome woman, evidently intelligent and quick-witted, rather fond of admiration, and as she was to be the star witness for the other side of the case, I at once made up my mind that the whole case must turn upon her testimony. As the deceased had been frequently under the influence of opiates, administered by the physician for the purpose of relieving her suffering from time to time, it would be a very easy matter for a young woman gifted as this one was with facility of speech, to make the most of the incoherent utterances of the patient while under the influence of opiates. I foresaw that it would not do to subject this young woman to a severe cross-examination or say anything that implied that we doubted her honesty or veracity, and yet something must be done or we were sure to lose our case. I took my young bachelor friend, Judge Kavanaugh, to one side and told him wherein we were in danger, and as he was a member of the same church and was himself an Irishman, and had no doubt "kissed the Blarney stone," it was absolutely necessary for him to cultivate the ac-

quaintance of this witness, even to the very verge of proposing matrimony. I told him I could easily attend to the law of the case, the cross-examination of the witnesses, but this witness was outside my jurisdiction. He readily agreed to undertake the part of the case that I assigned to him. He accompanied the lady to and fro from her hotel at every adjournment or sitting in the court, and she evidently was very much pleased with his attentions. I cautioned him not to talk too much about the case, but talk of other things that he would find probably more agreeable subjects of conversation to the witness and to himself. He performed his part so admirably that when Judge Cole called upon his star witness she proved a flat failure upon his hands. She said yes in answer to his questions, that when the deceased was under the influence of her opiates she was a little flighty, but that amounted to nothing, that when the influence of the opiate was gone she was perfectly rational and capable of understanding what she was doing at all other times. The result was that the jury found a verdict in our favor and the will was sustained. Judge Given, however, who was a member of the Presbyterian church, seemed to be disappointed at the result of the suit, and set aside the verdict and granted the parties a new trial. From this action of the court we took an appeal to the supreme court, and the supreme court reversed Judge Given's decision, holding that there was no evidence that would have justified the jury in finding against the validity of the will, and they remanded the cause with orders to the district court to render judgment in our favor. In conversation with Father Brazil after the case was over we were discussing the probable reasons that induced Judge Given to set aside the verdict of the jury. I suggested that perhaps he had been reading Eugene Sue's remarkable work called *The Wandering Jew.* I asked Father Brazil if he had ever read that book. He smiled pleasantly and said yes, and when I expressed my surprise that he should indulge in such literature, he remarked very

calmly that he always thought best to know what the world was saying about his church and people.

I will give here also next an account of the most important criminal case I ever defended. A man by the name of Yard had shot and killed a party by the name of Jones. He claimed that he pointed a shotgun over the shoulder of his wife at the time Jones was approaching his wife about to commit an assault upon her for an illegal purpose, when he fired the gun and Jones fell dead as a result. Jones had come onto the premises where Yard and his wife resided, having in each hand a bucket with which he was supposed to be intending to go to a well for water. The buckets were found some distance, probably twenty-five or thirty steps from the door, and the prosecution claimed that the buckets indicated the place at which the deceased was at the time he was fired upon and killed. Yard and his wife were both in jail at the time I was sent for, and the first thing I did was to enjoin upon them the necessity of absolute silence and refusal to answer any questions or to communicate with any party or parties who might possibly thereafter testify against them. Upon a preliminary trial before the justice I waived an examination of the case and had the defendants enter bail for their appearance at court. A man by the name of Smith, who was the owner of the gun with which the deceased was shot and who had loaned it to Yard only a few days before, was indicted with Yard and his wife as accessory to the crime. As the defense in this case would depend entirely upon the testimony of Yard and his wife I at once appreciated the absolute importance of having these parties tell the exact truth without equivocation or invention. My experience as a lawyer had taught me that persons deeply interested in the result of the trial, participating in a transaction such as the killing of another, are subject to such a state of nervous excitement that they frequently do not remember with any degree of accuracy the collateral facts and circumstances attending the more important events, and persons of ordinary intellect

imagine it is important that they should be able to recollect and answer accurately every question that is made in regard to the collateral facts and circumstances attending the principal event, and almost invariably they invent answers to such questions and pretend to know what really they do not know and do not recollect. The result is that they involve themselves in contradictions and impossibilities, and let confusion destroy even the reliable and truthful parts of their evidence, and this was what I feared in this case. I was accused by some members of the bar and outsiders of training these parties as witnesses in their own behalf, and in one sense of the word it was true, but I only trained them to tell the truth, carefully eliminating from their story and had them eliminate everything that I was satisfied upon thorough examination was the result of their invention instead of their recollection. I first examined each of the parties separately and took down their statements carefully, and after comparing them tried to make up my mind as to what was absolutely true and as to what part of their story was invention. I then brought the parties together and discussed with them such parts of their story as I was satisfied had been supplied by them and had them admit and concede that they did not distinctly recollect the matter as stated. I repeated this process the third time. In some manners the man and his wife differed as to their recollections as to some things that had happened, and when I was satisfied that the difference was honest I made no effort to correct or to reconcile their statements, for my experience also taught me that absolute coincidence in every particular of their statements would tend rather to discredit than to confirm the truth of what they related. Another difficulty in the trial of the case was the excitable temperament of Mrs. Yard, and what I feared most was that the prosecutor by severe cross-examination might make her angry and she would display some temper and make some statement that would injure her case. When she was upon the stand under cross-examination by Judge Given, who was then the prosecuting attorney,

I kept my eye upon the woman carefully. She was under examination at least three hours, and only once did the prosecutor succeed in exciting her so that she developed any passion. He said to her in a very abrupt and preëmptory manner, "Now please turn and face that jury and tell them that you removed those buckets from the doorstep to the place where they were found." As she turned in a passion to face the jury, flushed with excitement, I was fortunate enough in catching her eye and fixing her attention a moment, when her passion subsided, and in a very calm lady-like way she said, "Gentlemen, I did remove those buckets from the doorstep and place them out in the yard just as I have heretofore related." She said this in such a calm lady-like way that I was satisfied we had gained our case. I proved, of course, the bad character of the deceased and that he was a bad and dangerous man, and also the good character and reputation of the husband, which indeed had been and was unimpeachable up to that time. I examined in this case over seventy witnesses in behalf of the defense. The jury retired and were only out an hour or less, when they returned a verdict of not guilty.

In the latter part of the administration of Cyrus Carpenter as Governor of the state, the State Treasurer was also treasurer of the Board of Trustees of the Agricultural College. The two offices had no legal connection, and it was merely an incident that the same man had been elected to both positions—the one by the people of the state, and the other by the Board of Trustees of the college. The Trustees of the college in making their annual report to the legislature reported that their treasurer had proved a defaulter to the sum of about $27,000, and that they had, in order to secure the college, taken from him deeds for all his real estate including his homestead—all of the property save his homestead having, as they understood, been purchased by their treasurer with funds belonging to the college. About nine o'clock one evening I received a visit from the deputy treasurer of state who informed me that the legislature, then in session, had passed

a joint resolution, appointing a committee for the purpose of investigating the question as to what funds of the Agricultural College had been used, and also as to the proper administration of the funds belonging to the state in the state treasury; that the Treasurer of State and of the Agricultural College, being the same person, was about to be examined the next day by this committee of investigation, and upon advice of his friends he wished to employ counsel, and wished that I would act as his counsel in the matter, and particularly the deputy wished me that night to go with him and have a consultation with the treasurer. I accordingly accompanied him to the house of the party. I found him to be an old man probably between sixty and seventy years of age, white hair and beard, blue eyes, a fine stalwart frame, but laboring under intense excitement. I listened carefully to his story, in which the deputy frequently interpolated or supplemented the statements. The care with which both parties persisted that the funds were not state funds, but it was only the funds of the Agricultural College that had been wrongfully used or appropriated, made me fear that neither the principal nor his deputy were telling me all that they knew. I felt as Shakespeare says in one of his plays, "Methinks the person doth protest too much." We were standing in front of the fireplace and the light of the fire threw a peculiarly bright light upon the countenance of the treasurer, and the deputy remarked, "Now you understand these funds were in the hands of the treasurer of the Agricultural College, and that he did not use the state funds. If he was defaulter as Treasurer of State he could be punished by imprisonment in the penitentiary, but if he was only defaulter as treasurer of the Agricultural College that would be a different affair. Is it not so?" The State Treasurer was eyeing me very earnestly and watching carefully for my answer to the deputy's question. My answer was that I was not prepared to say that that was true, and the State Treasurer turned still paler and more nervous because my answer was not satisfactory. My conference lasted until after

midnight. I returned home feeling very anxious for the old man, but still satisfied in my own mind that I had not heard the entire truth. The next day the committee of investigation, consisting of members of the house and senate, convened, and I was present when the State Treasurer was examined by them. The story was told very much as it was told to me the night before, some questions of a general nature were asked, but nobody seemed to understand the importance of knowing when and what particular fund had come into the hands of the treasurer as custodian of the funds of the college, or when or what particular amounts had been used or confiscated by him. The committee adjourned until next morning. That afternoon the house of representatives had passed a joint resolution requesting the Attorney General to give an opinion as to whether or not a defalcation by the treasurer of the Agricultural College funds constituted a crime, and also instructed him that in case it constituted an offense he should at once commence a prosecution against the party in question. Fortunately, this action of the house of representatives offered me a good excuse or pretext at least, to have the treasurer refuse to answer any further questions by the investigating committee, and we accordingly withdrew him from the witness stand. Within the next day or two the deputy came to me and showed me a lot of memoranda made on slips of paper in his handwriting, containing certain figures, the aggregate of which amounted to the sum for which it was claimed the treasurer of the Agricultural College funds was in default. The deputy advised me that these slips had been kept in the state treasury vault and had been counted as cash items from time to time. Within a few days after that I had an interview with Dr. Welch, the president of the Agricultural College, and he stated to me that he was not satisfied that the funds that had been used by the treasurer were Agricultural College funds at all, and that the loss was saddled onto the college very much to the embarrassment of that institution, as they now had to wait for their money until such time as the property which had been turned

over to the trustees could be turned into cash. He said he had a letter in his possession written by the deputy stating that the treasurer was away from home at that date and that he had not drawn the $30,000 theretofore appropriated by the legislature for the benefit of the college, but that the treasurer would return in a short time and that he would advise the president on his return. At my request the president furnished me this letter and its date, and I found upon comparing it with the date of the warrant drawn in favor of the treasurer of the Agricultural College for the $30,000 and the cancellation of that warrant; that is, when it was marked paid, that there was a wonderful correspondence between the date of the letter and the date when the warrant was marked paid. The deputy, at my request, had given me these slips of paper containing this memoranda and I had carefully locked them away in my iron safe, thinking that possibly they might be of future use. At the next term of the district court of Polk county the grand jury found two indictments against the State Treasurer, one as defaulter to the state of Iowa as Treasurer of State, and the other as defaulter to the State Agricultural College, but examining the minutes of the grand jury, I found that there was no evidence whatever before the grand jury that the State Treasurer had used any state funds at any time for any purpose, and the indictment of him as such a defaulter was not justified by any testimony taken by the grand jury. I immediately suspected that there was a secret hand at work intending that this old man should be convicted, if not of one offense, then of the other. Upon investigation I found that there had been some informality and illegality in drawing and impaneling the grand jury that found these indictments. On proper motion in court I had both indictments quashed and the matter continued for the action of the grand jury at the succeeding term of court. At the next term of court a new grand jury was impaneled, the foreman of which was a personal friend of the treasurer and a very honorable gentleman. He took occasion to suggest to me that it was very painful to him

to have to find indictments against my client, the treasurer, but that he should certainly perform his duty in that respect. I said to him that that was all right, but it was not right for a grand jury to find an indictment against any man without some evidence before it, tending to show he was guilty of the particular crime for which they found their indictment, and told him that the former grand jury had indicted my client for defalcation as Treasurer of State without a particle of evidence, save and except that as treasurer of the Agricultural College board he had made default as to that fund. The result was that this grand jury brought in an indictment only against my client as defaulter as treasurer of the Agricultural College, and for unlawfully using and converting to his own use the funds of that institution. The case was continued from term to term for several years, and in the meantime the property that had been turned over to the trustees had been converted into money, and the loss of the State Agricultural College had been made entirely good. Still the indictment remained against my client and had to be tried and disposed of. The old man had given up his house and his home and there was much sympathy existing in the community for him, and a general impression got abroad that he was the victim of others who had unloaded some very unprofitable property upon him and induced him to invest in it with the expectation that it could be re-sold to advantage and the money refunded before it should be called for. Whether this was true or not and who the parties were that had induced the old gentleman to betray his trust, I do not know and have never tried to ascertain. The time came finally that the man was to be put upon his trial. He came into my office the day before the case was to be called for trial, looking pale and haggard, told me he had bid his wife goodbye and his boys and that he was prepared for the worst, that he supposed there was no hope for him, that he could endure it but it was hard on the family at home. I invited him into my private room and seating him at the opposite side of my table I said to him that for the sake of his wife and children I

had made up my mind that he should be acquitted. He looked at me incredulously and asked what I meant, and how it was possible for him to escape conviction. He said he had already confessed his fault and they had his confession all taken down in writing before the investigating committee. I stepped to my safe and took out the memoranda that I had obtained from his deputy and laid them down before him. Looking him fully in the face, I said, "Tell me what those papers mean?" He asked me where I got them, and said he supposed they had been destroyed long ago. I told him no, that I carefully preserved them because it might be, as I thought, for his interest at some time or other to tell the truth, that there had been enough lies told about the business, and now probably the truth might save him. He asked what I meant. I said to him, "Here is a memoranda of the amounts that you took out of the safe that belonged to the state of Iowa. They never were in your hands as treasurer of the Agricultural College and you know it and you have known it all the time. You thought I was deceived, but I was not. I have known the truth and I hoped the time might come when the truth might benefit you more than the falsehood." I showed him the letter written by the deputy to President Welch. I had a memoranda of the date of the cancellation of the $30,000 warrant issued to him as treasurer of the Agricultural College. I looked him fully in the face and said, "You never had that money in your hands, you never received it, you were not at home when that warrant was cancelled, and you know it." He sighed deeply and said, "That is true, but I told a different story and now what am I to do?" I said to him, "All you have to do is to tell the truth." The old man took courage and told me that I had guessed the truth and it was true that he had never used a dol lar of Agricultural College funds. Upon the trial I introduced in evidence the memoranda that had been kept in the safe of the State Treasurer, I introduced the warrant that had been issued by the auditor to the treasurer for Agricultural College funds, I proved by Dr. Welch the letter that had been written him

by the deputy and the date of the transaction, and I satisfied the jury beyond a doubt that my client was not guilty of the only crime for which he then stood indicted, to-wit, defaulter to the Agricultural College funds. Judge Leonard, then upon the district bench, had been former prosecutor in the district and did not listen with complaisance to any defense which tended to acquit an accused person, but after wrestling with him for quite awhile he finally admitted my defense and the testimony sustaining it, and instructed the jury flatly that the defendant was not on trial as defaulter to the funds of the state of Iowa, but as defaulter as treasurer of the Agricultural College funds, and they must find him guilty of the latter or they must acquit him, and the jury brought in a verdict of not guilty. This result created quite an excitement in the community and throughout the state, and I acquired some reputation as a criminal lawyer, but few persons understood the real nature of the defense that was made or how it was that the defendant was acquitted in the case, and attributed it to some extraordinary ability upon my part, whereas in truth and in fact I only gained my case by insisting upon my client telling and proving that which was true and abandoning a falsehood that I suspected then and have ever since believed was invented for him in order that other persons should not be suspected of any guilty knowledge of what had really occurred. My client returned to his home, to his wife and children, at least free from a record of conviction for a felony.

CHAPTER VI

Visits Virginia Relatives

Soon after the close of the Civil War I went to Washington, D. C., for the purpose of arguing a case then pending in the supreme court of the United States. The court made an order advancing some important cases in which I think the government was interested, and this necessarily delayed the hearing of the cause in which I was engaged and left on my hands a week or more of leisure. I determined to improve the opportunity by going to Harper's Ferry and to Shepherdstown, West Virginia, for the purpose of finding and visiting some of my mother's relatives. I had an uncle, Charles Cameron, who had lived at Harper's Ferry when we left Maryland in 1841. I took the train to Harper's Ferry, and upon my arrival there ascertained from the hotel clerk that my uncle Charles had died a short time before the Civil War and that his family had removed to Washington. I asked the clerk if he could point out to me some old resident of the place from whom I could obtain information. Whilst talking with him a man entered the office to whom he recommended me as a person that could tell me all about Harper's Ferry before the war. From this gentleman I learned that my uncle, John Cameron, was living with a married daughter several miles over on the Maryland side, just under Maryland Heights. I walked out to the place and had a most delightful visit with him and his daughter, and son-in-law and family. My uncle was a tall, splendidly framed man, a fine specimen of the old Virginia gentleman, over six feet in height, with his faculties unimpared, a fine physique, and was then ninety-three years of age. He went with me the next day over to Shepherdstown, West Virginia, where we found still living and in fine health my

uncle, Daniel Cameron, and wife, their daughter, their granddaughter, and their great-granddaughter, all living under the same roof. When Sunday came I went with my cousin to church and she took me to the Methodist Church South. At dinner that day I asked my uncle John if he had been to church. He said, "Certainly, sir." I asked him what church he attended. He answered, "The Methodist church." I turned to my cousin Susan and asked her if we had been to the Methodist church. She said, "Yes, the Methodist Church South." I said to my uncle, "Then you were at the Methodist Church North?" "I attended, sir, *the* Methodist church of the United States of America." My cousin stepped upon my toes about this time under the table, from which I took the hint that the question of church north and *the* Methodist church was rather a delicate subject to discuss in the family. I was pleased to find that my relatives had all been true to the cause of the United States and were earnest Union people, except the sons-in-law, who, being young men, were compelled to go into the rebel army.

I visited some of the old places where my father had formerly resided and where he had taught school, and I also visited the grave of my mother and grandmother Cameron in the village churchyard adjacent to the old brick building where I had attended Sunday school when a child. I had arranged with a gentleman who had married my cousin, Ann Cameron, to go with him the next day by way of Sharpsburg, over to Boonesboro, Maryland, but that evening I received a telegram from the clerk of the supreme court advising me that my case would probably be called Monday or Tuesday, and I hastened back to Washington. After disposing of my business in Washington I made a visit to my brothers at Rushville, Ohio. Whilst here we received news of the nomination of General George B. McClelland as democratic candidate for the presidency in opposition to Mr. Lincoln, who had been nominated for his second term. An old acquaintance, Charles Wiseman, who was postmaster at Lancaster, came to see me at Rushville and told me

they had posted me for a political speech that night, and he compelled me to go with him and fill the appointment. I found in Lancaster many old friends and acquaintances, boys who had been with me at school, and they gave me a hearty greeting. The old court house was filled to overflowing that night and I dispensed to them for over two hours the gospel of true Republicanism and loyalty to the country. We had a very enthusiastic meeting, and my old friend, John D. Martin, especially gave me a very hearty commendation.

Before my return home I also visited Millersburg, Kentucky, to see my sister Susan and her family. Her husband, William Vimont, had suffered some during the war. His negro cook and her grown boy had been emancipated by their own will, the fugitive slave law being then practically inoperative. Morgan, in his raid through the country, had also stolen Vimont's fine horse, which served somewhat as an antidote for the wrong that he felt had been visited upon him by the Union people. In passing over from his house to the village of Millersburg two incidents occurred which served to illustrate the state of affairs at that time in Kentucky. Upon reaching the turnpike near Mr. Vimont's house we met one of his uncles riding in a buggy, just coming out of the gate which led to his residence, and he informed us with much feeling and passion that when he woke up that morning he discovered that there was not a nigger on his place, that he had no nigger at home to cook his breakfast for him, and that he had to "hitch up his own horse, sah." This last item appeared to be the culmination of his grief. A few hundred yards further we passed a blacksmith shop, and upon the large door that constituted the entrance to the shop we found in red chalk the image of a man drawn, and the door within the lines of this image was full of bullet holes. Mr. Vimont informed me that the blacksmith, who was a violent secessionist, had been accustomed to amuse himself by drawing upon the door of the shop the outline of a person, calling it Lincoln, and then standing a short distance away, revolver

in hand, gratifying his rebel heart by filling the image full of bullet holes.

It was during this visit to my brother-in-law that I urged upon him the propriety of selling his little farm and purchasing land in some western state and removing his family thither, which he finally did a few years later, when he removed to Tuscola, Illinois.

I attended religious services in the village on the Sabbath, and was much interested in hearing a sermon from the text, "Be not deceived, God is not mocked, for whatsoever a man soweth that shall he also reap." The sermon that the minister preached was by no means the same as my thoughts framed from this text when I thought of the desolation that I had witnessed through this state, and the effects of the dark shadow that was just then lifting from one of the fairest lands that a benevolent Creator had ever prepared for a people, but which the stupidity and cupidity of man had cursed with human slavery. The preacher appeared to be perfectly blind as to the crop that his audience had reaped from the fearful sowing of their fathers, or dared not mention even had he thought of it.

CHAPTER VII

Pleasure Trip to Colorado

In the summer of 1872 I joined a party of friends for the purpose of visiting Colorado. The party consisted of Judge Byron Rice, Doctor Ward, Alexander Talbott, Mr. Weaver, a druggist, and Monroe, a clothing merchant, and myself. We went by rail to Denver. We took with us a tent cloth, some blankets, buffalo robes, and bedding. At Denver we purchased a three-seated spring wagon and a pair of good mules. We also hired a teamster with another pair of mules and wagon, and bought a camping outfit, cooking utensils, and provisions. From Denver we went south to Colorado Springs. Our first camp south of Denver was at a place called Haystack Ranch, so called because there had never been a haystack on the ranch, but three immense boulders bore a striking resemblance to three haystacks, in the vicinity of which a settler had erected his buildings. A small mountain stream supplied him with the facilities of irrigating his land. He had built a fine large milk house, paved with flagstones and so arranged that he could turn the mountain stream of ice cold water on the floor of the building and thus regulate its temperature. He also had built an overshot water wheel with a small trough or flume and through this trough he turned the water onto his wheel from time to time as he wished it, and utilized its power to churn his butter. He milked about thirty cows, which he told us were fed entirely upon the buffalo grass in the valley near by among the foothills, and that he sent his butter twice a week to the city of Denver. The man was evidently living an easy, pleasant life, and getting rich without any severe toil or drudgery. The town of Colorado Springs was then a single street with a few straggling

houses. Within a few miles of it we found the newly laid out city of Manitou. The surveyors were still at work surveying the streets. One large hotel was in course of erection and the valley up Cheyenne canyon contained about two hundred tents filled with invalids and health seekers. In this canyon could be found mineral waters of any temperature and almost any ingredients; principally iron, sulphur, lime, and soda. On a beautiful plateau of ground near where the hotel was being erected we pitched our tent and made our camp for several days. We finally concluded to make the ascent of Pike's Peak. Besides the two mules that we had bought, we hired some ponies accustomed to the trail, except that Mr. Monroe, one of our party, declared that he was able to walk, and refused to be provided with other transportation. We proposed to go up the mountain to the timber line the first day, and stay all night, and the next morning attempt to reach the summit by sunrise, for the purpose of enjoying what we were assured would be a most magnificent view of the country. Judge Rice and myself were a little late in procuring our ponies, and the other four of the party started in advance of us, Monroe on foot. "Halfway," as it was called, up the mountain, we stopped for rest and refreshment at a little log shanty erected by two enterprising young men, who there supplied luncheon and sleeping accommodations to the traveling public. The trail at that time was barely visible to the naked eye, and the climbing was difficult and somewhat dangerous even with our trained animals. Several hundred yards before we reached the timber line, so-called, we found Monroe lying in the path and apparently almost lifeless. The rare mountain air had scarcely left him oxygen enough to preserve life, and he had succumbed to the inevitable. We found near the timber line a shelving rock or rather a large cavity in the rock, where we took up our quarters for the night. Carrying Monroe to this place and wrapping him in blankets, we infused life into him by administering several doses of brandy, of which Judge Rice fortunately had a small flask.

A large pine tree had fallen across the outer edge of this rock against which we could place our feet to prevent slipping over its edge, and here we all tried to sleep. A fearful thunder storm came up in the night, but fortunately the storm was below us. It was indeed a grand sight to see the forked lightnings darting through the clouds below us, without any apprehension of their finding our retreat. Our sleep, however, was very indifferent. We had been in the territory only about ten days and our breathing apparatus had not adjusted itself to the necessities of a life in these altitudes. We fairly gasped for breath. In the morning when we awoke we found that we could take our ponies no farther on the trail, for there was none visible to the eye. The remainder of the journey to the top of the peak was necessarily a climbing over huge rocks scattered here and there without reference to the convenience of adventurers. We could walk or rather climb about one hundred feet between rests and then fall down under the shadow of a great rock to recuperate enough strength for a venture of perhaps a hundred feet more. After climbing about four or five hundred feet or more in this manner we each began to feel a roaring in the ears and a nausea of the stomach, and at last had the discretion to call council in which we unanimously concluded with old Falstaff, one of Shakespeare's heroes, that the better part of valor was discretion, and we concluded to return to the valley below and forego the magnificence of a sunrise view from the top of Pike's Peak. When we got back upon our way as far as the timber line where we had hitched our ponies, I found my pony had taken "French leave" and gone down on the trail without waiting for my valuable company. I was doubtful at first whether I should be able to walk to camp, which was then over eight miles from the place of our night's adventure, but I had not proceeded down the mountain a mile before my strength returned to me and my lungs filled with sufficient oxygen to restore my vigor. We all got back to camp safely, even including the dilapidated Monroe, and the consensus of opinion

was that we were glad we went up Pike's Peak, but were more satisfied with the reflection that we did not have to go again. After another day's rest we took to the road with our mule teams and wagons, passing over a beautiful mountain road up Cheyenne canyon. Every few hundred yards we passed some beautiful cascade or water fall, formed by the dashing waters of some mountain stream supplied from the eternal snows that crowned the mountain peaks around us. Our road lay through the so-called South Park. On the high table lands before we reached this park we passed through a forest of petrified wood. At one cabin, occupied by a gentleman who kept a small hotel, we found the foundation of his house made of this petrified timber, and his chimney and fireplace of the same material. We gathered a few specimens that we afterwards brought home with us. In South Park we passed what was called the salt works. Here some English capitalist had built an immense plant for manufacturing salt. A natural spring that threw a constant stream of salt water, probably ten or twelve inches in diameter, supplied the water from which the salt was to be made. Large and commodious buildings with evaporating apparatus had been erected. An expenditure of probably fifty or one hundred thousand dollars had been made. There was only one difficulty about this Utopian enterprise and that was that the salt had to be manufactured so far from civilization that it cost more to transport it than it would be worth when it reached the market, hence the enterprise had been an ignominious failure and had been abandoned.

Leaving this point we passed through the South Pass of the Rockies and on to the headwaters of the Arkansas river. We went up this river to the town of Granite, that had been a thriving mining village when placer mining in these parts was profitable; thence we went to Twin Lakes, two small beautiful lakes of water among the mountains, where we camped and supplied ourselves with mountain trout. On the way we frequently shot mountain grouse. With our breakfast bacon and most excellent flour and potatoes, and our own improvised

cooking and our excellent appetites, we all fared sumptuously every day. We returned via another route, passing through Fairplay. Returning to Denver we sold our team and wagon for just its original cost, and paid our teamster with his outfit four dollars a day. We had kept an accurate account of our expenditures and found that $1.50 a day for each of us had paid all of our expenses, including our transportation, for our three weeks' trip. We made a trip then by rail and stage line, going first over to Idaho Springs, visiting that beautiful little valley, and some of our party going as far as Georgetown. Returning to Denver, we all came home by rail well satisfied with our trip, but when we struck the blue grass regions of Iowa and its fields of ripening corn, with the memories of the homes that we were nearing our hearts were made glad that we lived in a land of civilization and plenty.

CHAPTER VIII

Centennial Address

In the year 1876 the patriotic citizens of the state of Pennsylvania, and especially of the old city of Philadelphia, had conceived the idea of a world's fair to commemorate the great event of the world; to-wit, the declaration of the independence of the American colonies from the mother country. In planning this great exhibition the managers had invited the governors of the several states of the Union to appoint, each, one of their citizens to deliver an address in behalf of their state, giving something of its history and settlement, its resources and possibilities. In pursuance of this plan Governor Samuel J. Kirkwood of Iowa did me the honor to appoint me to make the address in behalf of Iowa. I prepared such an address with considerable care, and delivered the same upon the exposition grounds on the 7th day of September, 1876. My cousin, Henry Clay Cameron, who was then professor of Greek at Princeton University, did me the honor to visit me at Philadelphia at this time and took luncheon with my wife and myself upon the exposition grounds; also Samuel F. Miller, justice of the supreme court of the United States came from Washington and was present on that occasion, and many other distinguished men. Among other gentlemen present were official representatives of a number of the governments and nations of Europe. The legislature of Iowa printed at the state expense some twenty thousand copies of this address, that were thereafter distributed among the people of the state. I have sent at their request to a number of the libraries in the different states printed copies of this address, and now the supply has been about exhausted and the document is about

out of print, and I think I should give here a short synopsis of it.

The following is the introductory matter, stating something of the discovery of the territory that now constitutes our state:

Mr. President, and Ladies and Gentlemen: On the 13th of May, A. D. 1673, James Marquette and Louis Joliet, under the direction of the French authorities of Canada, started from the Straits of Mackinaw, in their frail bark canoes, with five boatmen, "to find out and explore the great river lying on the west of them, of which they had heard marvelous accounts from the Indians about Lake Michigan."

From the southern extremity of Green bay they ascended the Fox river, and thence carried their boats and provisions across to the Wisconsin. Descending that stream, they reached the Mississippi on the 17th of June, and entered its majestic current, "realizing a joy," wrote Marquette, "that they could not express." Rapidly and easily they swept down to the solitudes below, and viewed on their journey the bold bluffs and beautiful meadows on the western bank of the stream, now revealed for the first time to the eyes of the white man. This was the discovery of Iowa.

The address then proceeds to give a short account of the first settlements in Iowa at Keokuk, Burlington, Davenport, and Dubuque, and also the settlements afterwards made at Council Bluffs and Sioux City, and cites the various treaties made from time to time between the government of the United States and the Indians, extinguishing the Indian title. It also gives something of the topography of the country, and in regard to its resources and the natural fertility of the soil it contains the following:

We have now on exhibition in the Centennial buildings 15,000 pounds of Iowa soil, selected from forty-five different counties of our state. This exhibition shows a vertical section of the natural formation of the earth to the depth of six feet from the surface. The selection has been made from *five* several *groups* of *seven* counties each. The counties have been classified according to their contiguity, or natural location, as the northwest, northeast, southwest, southeast, and central. These specimens of strata are exhibited just in the condition

they existed in the earth. The strata, undisturbed, have been transferred to glass tubes six inches in diameter and six feet in length. These tubes are encased in black walnut, and each labeled with the name of the county from which the strata have been taken. The object has been in good faith to show the world what Iowa really is, without exaggeration, and without room for cavil. Here is the formation from nature's own laboratory. Behold, what hath God wrought!

The address also particularly gives an account of our school system, our state university and agricultural college, our benevolent institutions for the unfortunate classes, also the extent of our newspaper publications. It discusses to some extent the questions arising out of the Civil War and the heroism of our troops. On this subject the address contains the following:

It is impossible, in the reasonable length to which this paper should be limited, to write even a summary of the battles in which Iowa soldiers took part. The history of her troops would be substantially a history of the war in the south and west. To recount a portion of those battles and sieges would be to give a partial history to the neglect of others, equally deserving of honorable mention. A task alike impossible would be to give here the names of the heroes, living and dead, who distinguished themselves by their courage and valor. Our efficient Adjutant General has preserved in the archives of his department, the material from which this glorious history will one day be written, for the honor of the state and the inspiration of the generations that shall come after us. In the adjutant's department at Des Moines are preserved the shot-riddled colors and standards of our regiments. Upon them, by special authority, were inscribed, from time to time during the war, the names of the battle fields upon which these regiments gained distinction. These names constitute the geographical nomenclature of two-thirds of the territory lately in rebellion. From the Des Moines river to the Gulf, from the Mississippi to the Atlantic, in the mountains of West Virginia, and in the Valley of the Shenandoah, the Iowa soldier made his presence known and felt, and maintained the honor of the state and the cause of the nation. They were with Lyon at Wilson's Creek, with Tuttle at Donelson. They fought with Siegel and with Curtis at Pea Ridge; with Crocker at Champion Hills; with Reid at Shiloh. They were with Grant at the surrender of Vicksburg.

They fought above the clouds with Hooker at Lookout Mountain. They were with Sherman in his march to the sea, and were ready for battle when Johnston surrendered. They were with Sheridan in the Valley of the Shenandoah, and were in the veteran ranks of the nation's deliverers that stacked their arms in the national capital at the close of the war.

The address concludes as follows:

Iowa hails with joy this centennial of our nation's birth. She renews her vows of devotion to our common country, and looks with hope to the future. The institution of slavery, that once rested as a shadow upon the land, that was fast producing a diverse civilization dangerous to our unity and nationality, has been forever abolished.

This centennial exhibition of our national greatness and material progress must re-awaken in the mind and heart of every American emotions of profound love for his country, and of patriotic pride in her success. Surely no American would consent that such a civilization as is evidenced here should perish in the throes of civil war. If there be anything in the history of Iowa and its wonderful development to excite a just pride, the other, and especially the older states of the Union may justly claim to share in it. Such as we are, the emigration from the other states made us. Our free soil, free labor, free schools, free speech, free press, free worship, free men and free women, were their free gift and contribution. Iowa is the thirty-year old child of the republic that celebrates the first centennial of its birth. Our state is simply the legitimate offspring of a civilization that has found its highest expression in building up sovereign states. Iowa was not a colony planted by the oppressions of the parent government, and that threw off her allegiance as soon as she gained strength to assert her independence; but she was the outgrowth of the natural vitality and enterprise of the nation, begotten in obedience to the divine command to multiply and replenish — born a sovereign by the will and desire of the parent, and baptized at the font of liberty as a voluntary consecration of her political life. Not a sovereign in that absolute sense that would make the federal government an impossibility, but sovereign within her sphere and over the objects and purposes of her jurisdiction, with such further limitations only upon her powers as render an abuse of them impossible, to the end that the personal liberty and private rights of the citizen should be more secure.

This wonderful exhibition of mechanical skill, of cunning workmanship, and of the fruits of the earth, is but the evidence of the existence and character of the people that have produced them. The great ultimate fact that America would demonstrate is the existence of a people capable of attaining and preserving a superior civilization, with a government self-imposed, self-administered, and self-perpetuated. In this, her centennial year, America can exhibit nothing to the world of mankind more wonderful or more glorious than her new states — young empires, born of her own enterprise, and tutored at her own political hearthstone. Well may she say to the monarchies of the old world, who look for evidences of her regal grandeur and state, "Behold, these are my jewels." And may she never blush to add: "This one in the *center* of the diadem is called IOWA."

CHAPTER IX

Temperance and Prohibition

In giving a further account of the activities of subsequent years it will be almost impossible to preserve anything like a chronological order of events, and it will be necessary to take up certain subjects or topics that employed much of my time and energies, and probably as important as any other part of my life was my connection with the subject of temperance and prohibition.

The code of Iowa enacted in 1850 took effect July 1, 1851. Under the head of "Intoxicating Liquors" it enacted as follows: "The people of Iowa will hereafter take no part in the profits of the sale of intoxicating liquors." It then provided that the establishment of any place for the sale of intoxicating liquors to be drank on or about the premises should constitute a public nuisance, and enacted penalties against the sale of intoxicating liquors to be drank on or about the premises, and provided for the abatement of such nuisances and the punishment of all persons violating the provisions of this statute. This code was very excellent in the principle upon which the law was based; to-wit, that the people and government ought not to be a party to or share the profits of the sale of that which was the cause of so much poverty and crime, and the statute aimed at the destruction of the places of resort where the habit of drinking such liquors was contracted and promoted; but in its practical operation the law itself and its provisions were a failure. The words, "To be drank on or about the premises," involved two uncertainties—first, as to the meaning of the words "on or about," and secondly, as to the guilty knowledge or intent of the vendor of the liquors when he made his sale.

as to the manner and where the purchaser intended to drink. Courts and juries gave very different and very liberal interpretation in the application of this law to different cases, and many of our judges and justices were not well educated in the idea that the sale of intoxicating liquors as a beverage was really a crime against the community and against humanity. As a result of these uncertainties of the law, the people of the state in 1854 elected a legislature, the majority of the members of which were pledged to enact a statute of absolute prohibition. Such a statute passed both branches of the general assembly, and was approved by Governor Grimes. The settlements in the larger towns along the Mississippi river and in several of the interior counties embraced very many Germans and other persons of foreign birth, accustomed to the use, not only of intoxicating liquors, but to places of resort where the same could be drank at their leisure and pleasure. The result of this foreign demand was a fatal amendment to the statute of 1854-5 known as the "Wine and Beer Clause," which permitted the licensing and sale of beer and native wine made from the grapes or other fruits grown within the state. The practical result of this law was the establishment of the saloon in charge of keepers who paid no respect to the law and sold all kinds of intoxicating drinks under pretense of beer and native wine.

During our Civil War the people of the state were so absorbed in the progress of events that involved the existence of our nationality that they gave but little attention to local state and police legislation, but soon after the close of the war, the thought of the people was directed to the great curse of the licensed saloon and its effects upon the morals and habits of our people. In order that the policy of the state with reference to this matter might not be subjected to the caprice of political party conventions and elections, the people demanded and sought to enact an amendment to the constitution of the state that should embrace to its fullest extent a provision prohibiting the sale of intoxicating liquors as a beverage within

the state, including not only alcoholic liquors, but also malt liquors. In order to secure such a provision by way of amendment to the constituton it was necessary to secure the election of two successive general assemblies to pass upon such an amendment, and to secure a vote of the people endorsing and adopting the same at a subsequent election. The provisions of our constitution on the subject of amending the same were as follows:

Any amendment or amendments to this constitution may be proposed in either house of the general assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment shall be entered on their journals, with the yeas and nays taken thereon, and referred to the legislature to be chosen at the next general election, and shall be published, as provided by law, for three months previous to the time of making such choice; and if, in the general assembly so next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the general assembly to submit such proposed amendment to the people in such manner, and at such time as the general assembly shall provide; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the general assembly, voting thereon, such amendment or amendments shall become a part of the constitution of this state.

In pursuance of the provisions of this constitution the eighteenth general assembly of the state of Iowa, to-wit, in the year 1880, adopted as an amendment to the constitution of the state the following: "No person shall manufacture for sale, or sell, or keep for sale as a beverage, any intoxicating liquors whatever, including ale, wine and beer. The general assembly shall by law prescribe regulations for the enforcement of the prohibition herein contained, and shall thereby provide suitable penalties for the violation of the provisions hereof." This amendment, by omission of the clerk of the house of representatives, was not entered in full upon the journals of that body. It was, however, embraced in a joint resolution of the two houses and fully identified by its title upon the journal of

the house and senate, and the vote adopting the same was duly recorded by yeas and nays as required by the constitution. The publication of this action of the eighteenth general assembly was duly made in the newspapers prior to the election of the nineteenth general assembly, and at the session of that body another joint resolution was passed in both houses embracing the amendment and reciting the action of the eighteenth general assembly thereon, and this joint resolution passed both houses, and the yeas and nays were fully recorded, and proclamation was made by the Governor of the state, and the people of the state at a subsequent election held on June 27, 1882, after a vigorous canvass of the merits of the question, endorsed and adopted the amendment by nearly thirty thousand majority.

On the 26th day of August, 1882, a pretended suit was brought in the district court of Scott county by a brewing establishment owned and operated by Koehler & Lange against a saloon keeper by the name of Hill, in the city of Davenport, upon an account for beer sold by the brewer to the saloon keeper, and the saloon keeper set up by way of defense that he bought the beer and it was sold to him for the purpose of being sold as a beverage and that the sale was unlawful and contrary to the provisions of the amendment to the constitution. That this suit was a mere conspiracy for the purpose of having the amendment to the constitution declared void there can be no question. The judge of the district court of Scott county was opposed to the amendment personally and politically, as were also the attorneys that conducted these proceedings. The principal answer of the saloon keeper was to set up the constitutional amendment and the brewer replied stating that the constitutional amendment was not legally adopted, especially because the amendment had not been spread upon the journals of the house of representatives of the eighteenth general assembly verbatim, but that it had only been embraced in a certain joint resolution of the two houses. The judgment of the district court was against the

brewer for the beer, and he took a pretended appeal therefrom to the supreme court of the state. When the case reached the supreme court J. A. Harvey, Esq., who had been an active man in the general assembly in favor of the amendment, and who was also an avowed prohibitionist and friend of the amendment, was employed by the Women's Temperance Union of the state to appear in the case and argue the matter before the supreme court, involving the legality of the amendment. The Women's Temperance Union also employed Judge William E. Miller, an ex-judge of the supreme court of our state, who prepared and filed in the case a printed argument. I was at that time absorbed in my own private practice and had a case on trial in the district court, and was unable to attend the session of the court at which the case was argued. I had been very active in the canvass pending the adoption of this amendment at the popular election, and had spent much time in making speeches before the people in its behalf. I had promised Mr. Harvey that if my other professional engagements would admit of it I would assist him in the oral argument before the supreme court. To my great surprise, and to the surprise and consternation of the people of the state, the majority of the judges of the supreme court decided that the amendment had not been legally adopted, giving as their chief reason therefor the failure of the eighteenth general assembly to have spread upon the house journal a verbatim copy of the constitutional amendment at the time it was adopted by that house. As soon as this decision was made known I prepared and filed in the supreme court of the state a petition for a re-hearing of the case. This re-hearing was granted. The Governor of the state employed Senator James F. Wilson of Fairfield, and Hon. John F. Duncombe, of Fort Dodge, to appear and make oral argument in behalf of the amendment. I also appeared in the case at my own request and upon my own motion and argued the case orally at Davenport on the final hearing. Two of the judges of the supreme court; Judges Seevers and Rothrock, were not friends of the amendment, and

I think, in sentiment, were opposed to it. Judge Day's action in the matter in agreeing with Messrs. Seevers and Rothrock was a surprise to his friends, but I have no doubt his decision was honestly made. I think this re-hearing might possibly have resulted in a favorable opinion from a majority of the court had it not been for the intemperate zeal of a portion of the public press, particularly the Des Moines *Register* edited by the Clarksons in which the majority opinion of the supreme court was denounced. The judges who constituted the majority of the court could scarcely be expected to change their views and opinions under the pressure of the brutal attacks that were made upon them through the press. Judge Beck, the fourth judge of the court, had delivered a very able dissenting opinion sustaining the constitutional amendment. That the decision of the supreme court upon this question was radically wrong, I have never entertained the least doubt in my own mind. The supreme court in its majority opinion recognized the fact that the only proper and legal evidence of the final action of the legislative body in the enactment of its laws must be found in its enrolled bills, duly certified by the presiding officers of the senate and house of representatives respectively. The authorities were uniform, and no court had ever before undertaken to examine the journals of a legislative assembly for the purpose of contradicting and falsifying the duly certified action of the legislature by its presiding officer. Every bill that passes the general assembly of the state is duly enrolled by the clerk elected for that purpose by the house in which the bill originated. It is then supposed to be carefully examined by the committee on enrolled bills and reported in open session of the house, and is then presented by the clerk or secretary to the several presiding officers in open session for their signatures, and thence in the care of the proper committee on enrolled bills is presented to the Governor for his approval. To go behind this official action of the two branches of the legislature and undertake to examine and criticise the action of the clerk in recording or failing to record any

part of its proceedings, by the courts of the state, is simply to destroy the independence of the law-making power, and is nothing more or less than usurpation on the part of a coördinate branch of the government. The constitution of Iowa in its provisions in regard to an amendment of that instrument selects, first, the two houses of the general assembly, secondly, the executive of the state, and thirdly, the people of the state, the source of all political power, and entrusts to them and them alone the power to amend its organic law. This amendment originated with and was carefully prepared by and approved by both branches of the eighteenth general assembly, and subsequently by the nineteenth general assembly, there can be no question; that it was then submitted to a vote of the people, voted and approved by the people by a large majority, was then proclaimed by the Governor of the state in his proclamation as part of the organic law of the state, there was no question, and I do not hesitate to say, after years of thought and deliberation upon this matter, that the decision of the supreme court of the state in the case of Koehler & Lange against Hill was simply usurpation. During the pendency of this re-hearing and before the final arguments in the case Mr. Hill, the saloon-keeper of Davenport, attempted to defeat the re-hearing by asking the court to strike from the files the petition for rehearing and denying the authority of the attorneys who had filed the same to act in his name. The Governor of the state, after the final disposition of the cause, appropriated $750 to the three principal counsel engaged in the re-hearing, and sent me one-third of the amount; to-wit, $250 for my services in the matter.

The constitutional amendment thus attempted to be rendered null and void by the opinion of the supreme court in the case of Koehler & Lange against Hill was really only an amendment to the constitution enjoining upon the legislature the duty of enacting a prohibitory liquor law, and forbidding the enactment of any statute authorizing the license and sale of intoxicating liquors as a beverage. The immediate effect

of the decision of the supreme court was to arouse the people of the state to an assertion of their rights in regard to these matters; consequently they elected a general assembly in the fall of 1883, a large majority of whose members were pledged to give the people, by legislative enactment, a law such as the constitutional amendment required, and in pursuance of that purpose the twentieth general assembly enacted the prohibitory law, chapter 143, page 146 of the laws of that session. This law was popularly known as the Clark law, taking its name from the fact that it was introduced into the senate by Senator Clark of Page county. He was not, however, the author of the law, and was only entitled to the credit of having introduced it as a member of the senate.

Some time before these events there had been organized in the state of Iowa a temperance league, with its headquarters at Des Moines. Mr. J. A. Harvey, before referred to, and myself, with Louis Todhunter of Indianola, had been appointed by the Temperance League a committee to draft a prohibitory law and secure its passage by the twentieth general assembly. Another effect of the decision of the supreme court in the Koehler & Lange case was the retirement of Judge Day from the supreme bench of the state, and the election of Judge Read of Council Bluffs in his stead. I was a delegate to the republican state convention from Polk county. I did not sympathize with the idea of the defeat for renomination of a judge of the court on the simple ground that his decision or action as judge did not meet with the approval of the people, but I could not, with my ideas of right and justice, approve of the renomination of any judge of the court that had assumed the prerogative attempted to be exercised by the majority of judges in the Koehler & Lange case, and I cordially supported Judge Read for the nomination. I had assisted Mr. Harvey in framing the prohibitory law that was enacted by the twentieth general assembly, part of which was written by myself. I did not entirely agree with the committee, however, in providing as that statute does that the prosecuting

witness or party filing informations for a violation of the law should take to his personal use any part of the fines or penalties provided for in the statute. I disliked that feature of the law for the reason that I anticipated that bad men, for the sake of personal profit and gain, would bring the law into disrepute. The State Temperance League undertook to provide, to a greater or less extent, for the prosecution of offenders under this law of the twentieth general assembly. I was on the committee appointed by the League and was chairman of the committee that had advisory powers in regard to prosecutions undertaken or promoted by the officers of the League, and as chairman of that committee I had occasion, a number of times, to defeat the purposes and plans of those who sought to use the authority of the League for some ulterior purpose. The most serious case of this kind that arose during my administration related to the effort of a certain whiskey trust to use the prohibitory law as a means of destroying an industry established in Des Moines by invitation of its business men just prior to the taking effect of this prohibitory law of 1884. One of the chief men in encouraging the establishment of the International Distillery in Des Moines, so-called, was J. S. Clarkson, editor-in-chief then of the Des Mones *Register*. This International Distillery was an alcohol manufactory, established by a man by the name of Kidd. Before he invested his money in the plant he had taken the precaution to consult with a number of prominent citizens and prohibitionists of the city of Des Mones, to know whether or not his enterprise would at all be affected by the constitutional amendment or the statute that might be passed in pursuance thereof. Pending the action of the general assembly upon the constitutional amendment, the Des Moines *Register* had insisted upon some legislative interpretation of the meaning and effect of the proposed amendment upon the question of the manufacture of alcohol within the state as an article of commerce, for the purpose of shipping the same to the markets abroad and not to be sold within the state. In pursuance of the sug-

gestion of the Des Moines *Register,* the state senate of Iowa in 1882 adopted the following explanatory resolution as to the meaning and intent of the amendment then pending, and thereafter to be voted upon by the people, as follows:

Whereas, doubts have been suggested as to the true intent and meaning of the joint resolution agreed to by the 18th general assembly, and by this general assembly, as proposing to amend the constitution of the state so as to prohibit the manufacture and sale of intoxicating liquors as a beverage within this state; and

Whereas, it is desirable that such doubts should be removed as far as practicable before said proposed amendment is voted upon by the people; therefore,

Be it resolved by the senate, that said proposed amendment was and is designed and intended to prevent the manufacture within this state, for sale within this state, as a beverage, all intoxicating liquors, including ale, wine and beer, and to prohibit the selling of such liquors within this state for use as a beverage, and to prohibit the keeping of such liquors for sale as a beverage within this state; and was not designed to prohibit the manufacture for sale, or keeping for sale, of such liquors for any or all other purposes.

A short time before this resolution was passed a meeting of the board of trade of the city of Des Moines was held with reference to the same matter. It was attended by many of the most prominent prohibitionists of the city, and all concurred in the view of the amendment afterward taken by the senate. The sense of the meeting was expressed by a resolution reported by a committee, consisting of T. S. Wright, J. S. Polk, and J. S. Clarkson, and adopted with but one dissenting vote. The resolution is as follows:

Whereas, the agitation of the proposed amendment to the constitution of this state, prohibiting the manufacture of alcoholic liquors for sale, is creating doubt and uncertainty in the minds of capitalists proposing to invest a large amount of means in the manufacture of alcohol in this city; and

Whereas, we are satisfied the great majority of the people of the state do not construe such amendment as prohibiting the manufacture of alcohol for exportation, but that it simply prohibits its manufacture

for sale as a beverage in the state, a view in which the leading friends and the most of the supporters of the amendment concur; and

Whereas, we are sure the people of the state would vote down overwhelmingly any amendment absolutely prohibiting the manufacture of alcohol; therefore be it

Resolved, that the Des Moines Board of Trade accept the interpretation of the leading friends and supporters of the amendment, that it intends only to prohibit the manufacture for sale of alcoholic liquors in the state as a beverage, pledges itself to the support and defense of capitalists investing in such manufacturing as against all doubts as to the real meaning of the amendment, and further, that we will lend our active influence toward securing such legislative expression as will put upon the amendment the construction that it will only prohibit the manufacture of such liquors for sale as a beverage in the state.

This meeting of the board of trade, which was attended by many of the prominent prohibitionists of the city and of the state, I did not attend, though invited to be present.

In pursuance of the encouragement thus given to Mr. Kidd, and prior to the taking effect of the prohibitory law of 1884, Mr. Kidd expended several hundred thousand dollars in the building of his plant for the manufacture of alcohol at the city of Des Moines, Iowa, and continued such manufacture without interruption until certain prosecutions were commenced against him at the instance of the Western Export Association, a whisky trust organized by the distillers of the United States to prevent an excess of alcohol being manufactured, and by this means to regulate and keep up the price of the article. After the decision of the principal suit undertaken in this behalf, in which I. E. Pearson and a man by the name of Loughran were nominal plaintiffs and the International Distillery and Mr. Kidd were defendants, a decision adverse to the distillery was obtained and the defendants took an appeal to the supreme court of the state. Mr. Kidd and his attorney called upon me and reminded me of the fact that our firm, consisting of B. F. Kauffman and myself, had given them a written opinion to the effect that the law of 1884 did not make it unlawful to manufacture alcohol in this state as an

article of merchandise, to be shipped and disposed of beyond the limits of the state, and Mr. Kidd appealed to me to know if I was willing to accept of a retainer to argue that question in the supreme court of the state on his appeal, suggesting that he thought it my duty to do so as a lawyer, and asked if I was afraid to perform my duty in that behalf. I told him that I was not afraid and accepted of the employment.

As soon as this became known to the Des Moines *Register,* its editors commenced a series of abusive articles against me, containing misrepresentations and insinuations, and for some reasons best known to the editors of that paper and of which I am not advised, they became very active in trying to promote the success of this prosecution against the distillery and to destroy the same. These articles of the State *Register* created, of course, quite an inquiry among the friends of prohibition in the state, and they wrote a number of letters to Mrs. A. E. McMurray, secretary of the State Temperance League, making inquiry in regard to the matter of my employment. She accordingly wrote a letter to me upon the subject and I answered the same very fully, giving a history of the whole controversy, and particularly the motives of the men that were trying to destroy Kidd and his enterprise. Though the letter is somewhat in detail, yet, as it is a complete answer to all of the criticisms that have been made of my professional conduct in this matter, I give it here in full:

DES MOINES, IOWA, MARCH 19, 1887.

Mrs. E. A. McMurray, Secretary of Iowa State Temperance Alliance:

I have your communication of the 17th inst., and appreciating the motives that have prompted it, I take pleasure in responding to your inquiries.

The case of I. E. Pearson and S. J. Loughran against John S. Kidd, now pending upon appeal in the supreme court of the state, and in which I have been retained for the defendant, involves only the question as to the right of the defendant to manufacture alcohol in this state, under the permit granted him by the board of supervisors of Polk county, for the purpose of export. There is no pretense that

Mr. Kidd, since the taking effect of our present statute, has ever sold any intoxicating liquors, or alcohol, within the state of Iowa, for any purpose whatever. The only evidence offered to sustain the petition is contained in the official reports of Mr. Kidd to the auditor of the county, by which it appears that he has manufactured alcohol and shipped it out of the state. The article manufactured by Mr. Kidd and put upon the market is not itself a beverage, and is not and cannot be used as such in the form in which he has produced and sold it. The case was first tried in the circuit court of Polk county, before Judges Given and Henderson, upon an application for a preliminary injunction. In December last those two judges delivered an opinion in the case, deciding that Mr. Kidd had not in any manner violated the prohibitory law, and they refused an injunction. At the present term of the district court Judge Conrad, our newly-elected district judge, put a different construction upon the law and held, that by the amendment made to the prohibitory law by the legislation of 1884 it was unlawful to manufacture alcohol in the state for export; and this is the sole question to be determined by the supreme court upon the appeal. This answers the first inquiry in your letter, as to what is involved in the case.

Your next question is whether or not my employment in this case is consistent with my past record; and whether or not it is calculated to impair my influence and usefulness for the cause of prohibition in the future.

I was one of the committee appointed by the State Temperance Alliance to prepare a bill to be presented to the legislature for its consideration, in 1884, that should carry out the will of the people of Iowa, as expressed in the amendment to the constitution, which amendment the supreme court of the state had then decided was not operative, by reason of the failure of the eighteenth general assembly to properly enter the same upon their journals.

As early as the 31st of May, 1881, I prepared and delivered before the Methodist state convention that was held in Des Moines at that date an address on the legal phase of the prohibitory amendment. This address was afterwards printed in pamphlet form by the *Prohibitionist*, and was circulated during the amendment campaign as a campaign document, and seemed to meet with the views of the friends of prohibition at that time. In that address I took occasion to discuss the meaning and scope of the proposed amendment, and in it occurs

the following passage, defining my view of the legislation that would be required by that amendment, if adopted. I quote:

We have, in regard to spirituous liquors, laws upon our statute books designed to prohibit their manufacture or sale, except for medicinal, mechanical, culinary and sacramental purposes. For these lawful purposes certain persons are authorized to sell. They must obtain a permit, give bonds, keep books, etc., and are subject to the supervision and control of the authorities. The manufacturer could be required to sell only to persons thus authorized to sell for lawful purposes; if sold *within the state*, otherwise than as permitted by the statute, the act could be punished by fine or confiscation.

May 12, 1881, I attended a meeting of the State Bar Association of Iowa, the proceedings of which are reported in the Des Moines *Register* of May 13, 1881. That meeting discussed the meaning and interpretation of the proposed prohibitory amendment to the constitution. Mr. Cummins, an attorney of this city, offered a resolution at that meeting as follows:

Resolved, That the proposed amendment prohibits the manufacture of intoxicating liquors within the state for sale as a beverage without the state.

The *Register's* report says that "Judge Nourse arose and stated that Iowa had no control over the liquor after it left the state."

From the above it will appear that my interpretation of the constitutional amendment and of the efforts that we were about to make at that time to control the manufacture of intoxicating liquors within this state, did not contemplate any interference with the manufacture of alcohol for the purpose of export. That this view was in entire harmony with the views and opinions of the great mass of the people then favoring legislation upon this subject, is conclusively shown by the following extracts taken from the *Iowa State Register* of the following dates:

THE AMENDMENT'S MEANING

(*Iowa State Register,* February 3, 1882)

Nine-tenths of the mass of the supporters of the amendment that we know of hold the view that it is to deal with liquors only so far as forbidding their sale for use as a beverage in this state. So it is not a "Des Moines idea" at all, but the view of the great body of supporters of the amendment itself.

The truth is, then, as shown by the records of the supporters of the submission of the amendment in the legislature, and by the testimony

of nine-tenths of the supporters of it among the people who have publicly expressed themselves, that the amendment was not intended to prohibit manufactures for export. The State Bar Association at its last meeting discussed the meaning of it, and failed to agree upon it, opinion being about equally divided as to whether it means absolute and total prohibition or only as to manufacture and sale as a beverage in this state. We do not doubt that the original friends of the amendment intended to have it go no further than to make it deal with liquor as a beverage in Iowa. Nor do we doubt that the great body of them hold to the view now that it is intended to go no further than that. They know that the state has no power to go beyond that, and they realize that to attempt to carry the amendment, with the interpretation of total prohibition or manufacture given to it, it would be defeated.

For the people of Iowa will never consent, in our judgment, to prohibit the manufacture of their greatest staple into alcohol for export. In that form Iowa corn can be sent into South America and to the ports of the Mediterranean Sea, while in its raw form it can only go there by taking from five to ten bushels to pay the freight on one. This alcohol trade must be supplied, and will be supplied, and Iowa corn will inevitably supply a good deal of it, whether it is made up into alcohol for this purpose in Iowa, to the profit of the Iowa farmer, or whether it be shipped to Chicago and St. Louis, or elsewhere, at the loss of the Iowa farmer, and made into form there.

We do not ask that the amendment itself shall be tinkered with. But we do ask that the same majority which shall vote to submit it to the people shall put on record the true interpretation of its meaning. From this position we do not intend to be driven either by the ridicule of whisky rings or whisky papers, nor by the sneers of temperance papers, which have not yet examined into the question themselves, and would have every body else as stupid about it as they are themselves.

The Amendment's Meaning

(*Iowa State Register*, February 7, 1882)

The truth is, and all who have watched the progress of this contest know that it was never intended to make this amendment aim to do more than it was possible to do, namely, to exercise police power in its own state, and not aim to attempt to stop inter-state commerce, nor try and prohibit the use of liquor in other states.

(Appended is a letter from Hon. L. S. Coffin, supporting the *Register's* view.)

The Amendment's Meaning

(*Iowa State Register*, February 21, 1882)

We plainly told members of the convention before it met, in order that they might be warned in time, that thousands and thousands of voters were waiting for the true interpretation of the amendment be-

fore deciding as to their position toward it—*The Register* as a paper, among them. When they adjourned, evading and ignoring a question on which probably hung, and still hangs, the fate of the amendment at the polls, we held that the legislature should take some action to ascertain the real meaning of the amendment before ratifying it. This we held could be done by asking the attorney general, the lawyer and adviser of the state, to give his views as to its actual meaning.

These stills, encouraged by the government laws and by the people of Iowa, have begun their manufacture in the state. If Iowa is ever to be anything of a manufacturing state, it can hope to be so mostly, and will be profited mostly by manufactures from its own staple crop. This can go into alcohol, and always be sold, and yet rarely if ever, be used as a beverage. For alcohol is used in thousands of mechanical ways. It is made into varnish by putting gums and resins with it. It is mixed with spirits of turpentine, and makes camphene and burning fluids in endless quantities, used all over South America and Europe. It is made into cologne and other perfumed spirits by flavoring it with different kinds of oil, and all over Europe, when fuel is scarce, it is used in vast quantities for cooking and heating stoves. Millions and millions of gallons of it are used for other mechanical purposes. Very little of it in this form is ever used for a beverage. To say that Iowa corn should be made into this form in Illinois, or in Cincinnati, or New York, or Liverpool, but not in Iowa, is to still leave it to be so converted, and with Iowa bearing the whole loss and reaping none of the gain.

So we say, let us have the amendment's real meaning, so that it may be fully understood by the people, and voted up or down as it shall deserve to be.

As a member of the committee appointed to prepare a bill for the action of the general assembly of 1884, I can say that there was at no time any thought by the majority of that committee of asking any legislation that would prohibit the manufacture of intoxicating liquors for medicinal and mechanical purposes or for export and sale beyond the jurisdiction of our laws. That committee was composed of lawyers who fully understood that any legislation that we could obtain must be based upon the police power of the state to regulate the sale of intoxicating liquors within its jurisdiction. The Utopian idea that the legislature of Iowa could control the use to which intoxicating liquors, manufactured and sold as an article of commerce in the markets of the world, might be applied in another state, I do not think was at all entertained by the members of that committee, save perhaps one of them, Mr. Todhunter. The bill that was prepared by the committee and presented to the legislature was not enacted into a law in the

form in which we originally presented it; but house file No. 516½ was reported by the committee as a substitute for that and other bills that had been introduced on the subject and was passed in both the house and the senate in the form in which it came from the committee, and constitutes chapter 143 of the acts of the twentieth general assembly. And it is this law upon which Judge Conrad bases his opinion. That the friends of this law never intended or believed that it would prohibit the manufacture of alcohol in this state for export clearly appears from the record. Pending the vote upon the passage of this bill in the house the friends of the bill indulged in very little speech-making, and Governor Carpenter and Mr. Kerr were the only members who undertook to reply to the assaults of its opponents. The first effort of the opponents of the bill was to try and load it down with amendments and thereby secure its defeat. An amendment was offered by Mr. Bolter, of Harrison, making the bill an absolute prohibition of the manufacture of intoxicating liquors in this state, and this amendment came within one vote of being adopted. The vote stood fifty votes against the amendment and forty-nine for it. The entire fifty members that voted *against* this amendment of Mr. Bolter, voted *for* the passage of the bill the next day, while of the forty-nine that voted for Mr. Bolter's amendment nearly all of them voted against the passage of the bill. The *Iowa State Register* the morning after this vote was taken contained the following leading editorial giving an account of this attempt to kill the bill. I quote from the *State Register* of February 29, 1884, as follows:

The house spent the day yesterday on the prohibition bill. Our report in detail shows how desperately the democrats are fighting the inevitable.

The spectacle of the democrats voting at one time yesterday, for dishonest purposes, for absolute prohibition, and next ranging themselves on the side of the low license or practically no temperance law at all, is a vivid illustration of the insincerity of that party on the temperance question. Their attitude is insincerity itself, and they are ready to do anything to defeat honest temperance measures. The only test vote had yesterday was on the Bolter absolute prohibition bill (amendment) which was defeated by forty-nine yeas to fifty nays; all the democrats and all the greenbackers and one republican, Mr. Schee, voting for the amendment. Fifty republicans voted in the negative.

During the pendency of the discussion the *Register* of the same date contains a report of the speeches of Governor Carpenter and Mr.

Kerr in favor of the bill. The following is the full text of Mr. Kerr's speech as reported in the *Register* of February 28, 1884. Mr. Kerr said:

The opponents of the bill were wonderfully afraid it would not prohibit. There had never been any question as to the constitutionality of the amendment passed in 1882. It was only the manner of its enactment by the nineteenth general assembly that had rendered it invalid. He agreed with Mr. Dabney that the manufacture of liquors for any purpose was wrong. What was it the people of the state wanted to prohibit? The saloons; those hot-beds of infamy that were constantly bringing disgrace upon the state and misery upon the people. Any representative who fails to crystallize into form of law the will of the people fails to do his duty. How are we to know this sentiment, if not by the votes of the people? There is no better way. Mr. Bolter was eloquent in his denunciations of the evils of intoxication and he agreed with that gentleman and hoped when the time came the man from Harrison would vote in accordance with that sentiment. There are no interests in the state, vested or otherwise, that are higher than the interests of the whole people of the state, and it was better for a few to lose a few dollars than to entail and fasten upon the state an industry that directly or indirectly injures every man in it. It is best for all to have the business wiped out. Mr. Merrill asked Mr. Kerr if the bill permitted the manufacture of liquors for export. Mr. Kerr replied that the bill had been prepared by its friends and it was not intended to have it loaded down by its enemies. *The intention of the law was not to prohibit the manufacture for exportation, as there were some doubts as to whether that could be done.*

This law as it passed the house was published in full in the *Register* of the 28th of February, and on the 29th of February we have this leading editorial in the same paper:

The *Iowa City Press* tries to prove the impossible thing that the proposed prohibitory law in Iowa will discriminate against Iowa brewers and in favor of Iowa distillers. The same stale cry of the democratic campaign. We have heretofore shown that the proposed interdiction treats distillery and brewery alike *and leaves both free to manufacture for export.*

As to the vineyards of Johnson and other Iowa counties, their products ought to be able to ship as far and sell as well as the product of the Iowa distillers, and it will do so if it is a good article; if it is not a good article it will find no buyer at home now or abroad hereafter.

I have quoted the above remarks of Mr. Kerr, for the reason that Mr. Kerr was one of the most staunch and extreme prohibitionists on

that he was in favor of absolute prohibition; but at the same time he distinctly repudiates the idea that the legislation which he was then advocating was intended to accomplish any such end. The state temperance convention had simply demanded of the legislature that the will of the people of Iowa as expressed in the vote upon the constitutional amendment should be embodied in a law of the state. Or as Mr. Kerr very significantly remarks, should be "crystallized into law." It is well known as a part of the history of this temperance movement that the *Iowa State Register,* the leading journal of the state that advocated the constitutional amendment, demanded of the nineteenth general assembly, as one of the conditions upon which it would support the amendment, that it should adopt a joint resolution defining the meaning and intent of that proposed amendment, and that it should declare that it was not intended to prevent the manufacture of intoxicating liquors for the purpose of export and sale beyond the state boundaries. That resolution, with the vote by which it was adopted, is on page 501 of the senate journal, 1882, and is as follows:

Whereas, doubts have been suggested as to the true intent and meaning of the joint resolution proposing to amend the constitution of this state, etc.; therefore be it

Resolved by the senate, that said proposed amendment was and is designed and intended to prohibit the manufacture within this state *for sale within this state* as a beverage, of all intoxicating liquors, including ale, wine and beer, and to prohibit the selling of such liquors *within this state* for use as a beverage, and prohibit the keeping of such liquors, for sale as a beverage *within this state;* and was not designed to prohibit the manufacture, sale or keeping for sale of such liquors for any or all other purposes.

The yeas were: Senators Abraham, Arnold, Boling, Brown of Keokuk, CLARK OF PAGE, Cotton, Dashiel, Gillet, Greenlee, Huston, Hartshorn, HEMMINGWAY, Johnson, Kamrar, Logan, Marshall, Nichols of Benton, Nichols of Guthrie, NICHOLS OF MUSCATINE, Parker, Patrick, Poyneer, Prizer, Russell of Greene, Russell of Jones, Sudlow, Terrill, Wall, Whaley, Wilson, Wright—31.

All republicans and all *prohibitionists,* except Wall, who was a greenbacker. Those who think that it is disloyalty to the cause in me to advocate this same doctrine now should reflect that Clark of Page, and Hemmingway, and Pliney Nichols, are all in the same boat—to say nothing of the *Iowa State Register,* at whose special procurement this resolution was passed. The next morning after this

resolution was adopted, March 18, 1882, the *Register* contained the following editorial:

The senate defined the meaning of the proposed prohibitory amendment and gave to it the beverage interpretation for which the *Register* has so steadily and persistently contended. So that now the people of Iowa have the true definition of the amendment, which is, that it is to deal with liquors in manufacture and sale only as a beverage *in the state of Iowa.* It was this interpretation that the *Register* asked for in order to support it.

But the meaning of this law is, in my judgment, clear, from the text of the act itself without reference to this legislative history. This law left in full force section 1542 of the code, which defines the offense of keeping intoxicating liquors with intent to sell the same in the following terms:

No person shall own and keep, or be in any way concerned, engaged or employed in owning or keeping intoxicating liquors *with intent to sell the same within this state,* or permit the same to be sold therein, in violation of the provisions hereof.

This is in entire harmony with two decisions of our supreme court rendered prior to 1884, declaring that alcohol was an article of commerce that might be lawfully held and owned and kept within this state and for sale and export beyond the state. The prohibition contained in this section, 1542, against keeping intoxicating liquors with intent to sell the same within the state, is a clear declaration of the legislature that to keep or own the same with intent to sell it beyond the bounds of the state is not a violation of the law. And the amendment of 1884 in regard to the transportation of liquors, an amendment which I prepared myself and which was incorporated in the law in the very language in which I wrote it, prohibits any railroad company or common carrier from knowingly "bringing into the state" or "transporting intoxicating liquors between points within the state" without first having been furnished with a certificate from the county auditor certifying that the consignee or person for whom the liquor is to be transported is authorized to sell the same within the state. It is very evident that if this provision of law, which is section 1553, was intended to prohibit the export of intoxicating liquors, it would not have been so careful to limit the prohibition to importation and to transportation between points within the state. The section was written with express reference to the theory that the manu-

facture of intoxicating liquors in this state for purposes of export was not prohibited by law.

After this law of 1884 took effect, it will be remembered, that we organized in Iowa county alliances for the purpose of prosecuting offenders and enforcing its penalties. Such an organization was effected in Polk county, and I had the honor of being nominated as the chairman of the judiciary committee of such organization, which committee was charged with the duty of employing attorneys and enrolling prosecutions under the law. In May, 1884, Judge C. C. Cole, of this city, received from the Western Export Association of Distillers in the United States a claim against the International Distillery for $17,499.68, which it was claimed Mr. Kidd owed the pool, on account of over-production. It will be necessary to give some explanation of the character of this claim. The Western Export Association is an association of the alcohol distillers of the United States, chiefly located at Peoria, Illinois, whereby they undertake to control the manufacture of alcohol and limit its production in relation to the demand, and thus control and keep up the price of the article. The entire scheme is an unlawful one as against public policy, in that it establishes a monopoly and prevents competition in the production of a legitimate article of commerce and sale. Judge Cole was too good a lawyer to go into court with a suit upon such a demand, and he conceived the idea of using the criminal processes of the law against Mr. Kidd for the purpose of extorting from him this demand of the whisky pool. In accordance with this purpose Mr. J. S. Clark, his partner and afterwards one of the plaintiffs in this present suit, Mr. S. J. Loughran, was induced to appear before the county alliance and offer the services of Mr. Cole free of any charge to the alliance, for the purpose of prosecuting the International Distillery and harassing them with prosecutions upon alleged violation of the law, and asking that the secretary of our association, Mr. Littleton, give the use of his name for the purpose of filing complaints. The proposition was referred to the judiciary committee of the county alliance, of which I was chairman, and was duly presented to me by the secretary. It is hardly necessary for me to say that I refused to enter into such a conspiracy or to favor the use of the alliance for any such purpose. We had organized in good faith in this county for the purpose of enforcing the prohibitory law in the interest of the cause of temperance, and not for the purpose of collecting the illegal demands of the whisky

pool and the distillers of Illinois. The following is a literal copy of Judge Cole's letter to Mr. John S. Kidd, in relation to this claim:

DES MOINES, IOWA, MAY 24, 1884.

John S. Kidd, Esq., President International Distillery Company, Des Moines, Iowa.

Dear Sir: The Western Export Association has placed in my hands for collection by immediate suit a claim of $17,499.68 against the International Distillery Company, and you as its president. My pleasant personal associations with you have prompted me to ask and obtain permission for my client to delay the actual bringing of the suit till noon of Monday next, May 26th. I could not obtain leave for further delay because certain members of the association, who also have retained me to bring suit if this is not settled, claim that they are being further damaged to the extent of thousands of dollars daily, by the course of your company. Hoping to see you and to receive payment of the claim before Monday noon, I remain as ever

Very truly yours, C. C. COLE

To this very remarkable epistle Mr. Kidd made response of the same date as follows:

Permit me to suggest that you should not allow personal considerations to interfere with professional duties. This bit of advice is given gratis and by way of friendly return for the favor of your grace over Sabbath on the modest demand you make.

Yours truly, JOHN S. KIDD

It is unnecessary to say in this connection that Judge Cole never filed any petition in court on this modest demand. After the county alliance refused the use of its name or influence for the purpose of extorting this money out of Mr. Kidd, a clerk in Judge Cole's law office filed complaint against Mr. Kidd and procured warrants for the seizure of alcohol manufactured and shipped for export beyond the bounds of the state. All of these prosecutions proved ignominious failures. The present suit against Mr. Kidd was commenced in December, 1885, Lewis Todhunter appearing of record as attorney for the plaintiff, and I. E. Pearson and S. J. Loughran as the nominal plaintiffs.

In October, 1885, Mr. Loughran, at a meeting of the county alliance, offered a resolution instructing its officers to commence suit against the International Distillery, *provided evidence could be found against it.* I was not present at the meeting, and on motion of Mr. Lee the resolution was referred to the judiciary committee.

Upon inquiry of Mr. Harvey, the then president, and Mr. Little-

ton, the secretary, I found that neither of those officers had any information upon which a suit could be predicated, and neither would advise a prosecution. Mr. Loughran nor any one else ever approached the committee on the subject, or furnished the alliance any evidence.

The statement has been made that I was at this time the attorney for Mr. Kidd. This is wholly untrue. It is true, however, that early in 1884 the firm of Nourse & Kauffman was called upon by Mr. Kidd, for a consultation with the attorneys, Messrs. Lehmann & Park, in regard to his business affairs, and upon the matter of the construction of the act of 1884, Mr. Kidd advising us at that time that he desired strictly to observe the law in the manufacture of alcohol. We gave him our opinion at the time, and he paid our firm a fee of fifty dollars. I have had no business connection with Mr. Kidd or the International Distillery since that time, until my employment in this case, after the decision of Judge Conrad a few weeks ago.

Early in the year 1886 the secretary of the Polk county alliance reported that the funds of the organization and the available subscriptions were exhausted, and that liabilities had been incurred that we were unable to meet. Several unsuccessful efforts to have the subscriptions to our funds renewed were made. Mr. Harvey, on account of other engagements, declined a re-election as president of the county alliance in June, 1886. It seemed impossible to get a responsible person to accept of the position. Under these circumstances I. E. Pearson succeeded to that office. Though a gentleman of elegant leisure, he has never, since his election, been able, by his influence or exertions, to put a dollar into the treasury of the alliance.

He has, however, been operating quite extensively on "his own hook," as he says. His principal enterprise, apart from his present suit against Mr. Kidd, has been to watch the incoming of the monthly reports that the law requires the druggist to make to the county auditor, and whenever, by any misadventure, their reports have been delayed a few days beyond the time fixed by the law, Pearson has brought suit against them for the one hundred dollars penalty provided by the statute, and then compromised for the largest amount he could get out of the defendant. In this way he has made hundreds of dollars for himself and has been able to support such an improved style of personal appearance that it has attracted public attention and newspaper comment.

In this new *role* of "affidavit maker" to the *State Register* he has

already attained distinction. Whether this enterprise will prove a financial success I do not know, as I am not advised as to the terms of the new partnership. It is not yet known whether Pearson has taken the *State Register* into partnership, or whether the *Register* has taken in Pearson.

It has always been my fortune in life to antagonize men of this stamp. If I have not as many friends as some men of less positive opinions, I have the consolation to know that I have reason to be proud of the character of my enemies.

By what means he has induced eminent counsel, backed by the active influence of the *Iowa State Register,* to prosecute this case against Mr. Kidd, remains a mystery. To the oft-repeated inquiries of members of the alliance for information on this subject his answers have been evasive and entirely unsatisfactory. Judge Cole in his letter to Mr. Kidd mentions that certain members of the export association were being damaged "to the extent of thousands of dollars daily" by the course pursued by the International Distillery. "Thousands of dollars daily" is a large amount of money, and a very grave apprehension exists in the minds of many of the temperance men of this community that these "certain other individuals" are not idle spectators in this contest. When or how Judge Cole and Mr. Runnells or the *Iowa State Register* came into the case I do not know—I only know that they "got there."

" . . . he has no wings at all,
But he gets there all the same."

Judge Cole and Mr. Runnells are also defending Hurlbut, Hess & Co., and the six thousand dollars of intoxicating liquors condemned by the jury in that case. They are also attorneys for Rowe, the man who shot down Constable Logan. No one, I believe, has questioned their right to act as counsel for the defense in these matters or even suggested the impropriety of their employment. I certainly would not do so. The *Iowa State Register* has besought the public to suspend any judgment as to the guilt or innocence of Rowe, but to await the judicial investigation of the case. This is certainly commendable forbearance, but why the same spirit of fair play should not be manifested toward Mr. Kidd pending the judicial determination of his rights, I cannot understand. Does it make any difference because Mr. Runnells is defending in the one case and prosecuting in the other? Surely a man who has invested two hundred and fifty thous-

and dollars in manufacturing in our city, by the advice and encouragement of the *Register,* is entitled to as much consideration as the man who takes the life of a public officer whilst in the discharge of an official duty. The statement that the State Temperance Alliance has ever favored or endorsed the prosecution of Mr. Kidd is wholly without foundation.

I have now answered very fully all of the inquiries in your letter save, perhaps, the last, and that is as to the relation and effect of the present suit to the cause of prohibition in Iowa. Permit me to say to you, and through you to the true friends of prohibition in this state, that we have now upon our statute books a most excellent law, that is every day gaining favor with the people, and that has survived all open warfare upon it. In my humble judgment the most we now have to fear is not the open opposition of its enemies, but the follies and indiscretions of its friends. As I have already conclusively shown in this communication, we procured the enactment of this law by assuring the people of this state that we did not intend to interfere with the manufacture of alcohol or intoxicating liquors for medicinal or mechanical purposes, nor as an article of commerce for export. The question is, have we anything to gain by duplicity and insincerity, and by now claiming for this law what we did not claim for it when we procured its enactment by the general assembly? Above all things, have we, as prohibitionists, anything to gain by entering into an alliance with the distillers of other states who are making war upon a productive industry in our own state, for the sole purpose of promoting their own pecuniary interests in destroying competition in their business? Have we anything to gain by turning aside from the great work that we have undertaken of destroying the saloon as a place of resort where our young men are taught the habit of intoxication, and engaging in the Utopian scheme of regulating the supply of alcohol in the markets of the world, the use of which it is impossible for us to control after it passess beyond the jurisdiction of our laws?

There is another very grave and important question that the true friends of prohibition in Iowa should stop to consider. The courts of the United States have more than intimated that if the prohibitory law of Iowa does in fact destroy the value of property built for a use which was lawful at the time of its erection, that such a law is a violation of

the constitution of the United States, unless it also makes provision for compensation to the owner.

This International Distillery was built and in full operation before the amendment of 1884 was enacted. By virtue of its provisions a limitation only, in my humble judgment, was placed upon the uses for which alcohol might be sold within the state. The answer to the position that our law is unconstitutional because it affects the value of this property is, that it does not prevent the manufacture of alcohol for export or for sale within the state for lawful purposes. But if we propose to destroy the value of this property by this new interpretation of our statute, and say that it is our purpose and intent to prevent its use for the manufacture of alcohol for export, then may we not seriously apprehend that our law will be held unconstitutional, and may we not, in attempting too much, lose all? The fable of the dog crossing the log over the stream, that dropped the meat from his mouth in order that he might grasp the shadow, I would recommend to the careful study and perusal of some of our pretended friends.

But there is still another political phase of this question that we ought to carefully consider. Heretofore we have put the opponents of this law upon the necessity of defending the saloon as an institution; we have made the suppression of these places of resort the war-cry of our campaign. Is it the part of wisdom to change this issue and assume the affirmative of the proposition that the good order and peace of society requires that we should ship our corn to Peoria to be manufactured into alcohol rather than have it manufactured in our own state, either for medicinal or mechanical purposes or for export? For one I fail to see any wisdom in such a proceeding. I am not prepared to join in or acquiesce in such a folly. In accepting a retainer from Mr. Kidd in the case now pending in the supreme court I did so because it was my plain duty, as a lawyer, to defend the legal rights as I believe them to be, of a man whose property was unjustly and illegally assailed. I was not employed in the case until after Judge Conrad's decision. That the temperance people of Iowa will find any fault with me for presenting to the supreme court the question of law involved in this appeal I cannot well believe. How will these questions be answered?

First. Do they ask or desire that the property of any citizen shall be destroyed and condemned without a fair and full trial before the appellate court?

Second. Does not a fair trial also involve the right of the citizen to have the aid of a counsel?

Third. If the defendant is to have the aid of counsel, can my employment be any more objectionable than the employment of one who is an enemy of the law?

Fourth. Is it not true that the view of the statute that I propose to present to the court, is the view that we nearly all *pretended* to have when we procured the passage of the law?

The decision of Judge Conrad, though made no doubt with the utmost sincerity and good faith on his part, I regard as a mistake, and an unfortunate one for the cause of prohibition. In the interview published by the *Register* I said that neither the decisions of courts nor the conduct of lawyers or newspapers would defeat the ultimate triumph of prohibition. I still have faith in that proposition. If I have erred, or if the courts shall decide too much or too little, yet legal prohibition as a principle is right, and I believe will ultimately triumph. I do not believe the present prosecution of Mr. Kidd is justified by the law or the facts, and injustice and illegal prosecutions are not in my judgment the means of success in a good cause. Whatever personal malice may originate of misrepresentation or abuse of me in this matter, gives me no concern. I am used to this kind of thing and have never turned aside from my professional duty because of attempted newspaper intimidations. I am now in the thirty-sixth year of my practice in Iowa, and can afford, I think, to perform a plain professional duty. Asking pardon for the extent of this communication, which I have necessarily made somewhat in detail in order that your questions might be fully answered, I remain as I have ever been, an earnest friend and co-worker in the cause of prohibition, and

Most truly your humble servant,

C. C. NOURSE

The case of Pearson & Loughran against the International Distillery and J. S. Kidd was submitted to the supreme court upon oral and printed argument at the June term, 1887.

The republican state convention that was to nominate a supreme judge met at Des Moines, August 24th of that year. The supreme court at that time consisted of W. H. Seevers, Joseph Reed, Jos. M. Beck, James H. Rothrock, and Austin Adams. The latter named judge's term expired the first of

January, 1888, and either his renomination or the nomination of some one in lieu of him came before the republican convention to be held in August. J. S. Clarkson, the editor of the *Register,* and Mr. John Runnells, Esquire, the attorney of record nominally of Pearson and Loughran, but in fact acting for the whisky trust; to-wit, the Western Export Association, secured their nomination as delegates to the republican state convention. During the sitting of the court and before any opinion was announced it was well understood in the community that Judges Seevers and Reed had written an opinion reversing the decision of Judge Conrad, and that Judges Beck and Rothrock had written an opinion affirming the case, and that the fifth judge; to-wit, Judge Adams, had not yet officially concurred in either opinion and that the result of the case would rest with Judge Adams as he might concur with one or the other of these opinions. J. S. Clarkson and Mr. John Runnells, just prior to the meeting of the state convention, asked for a private interview with Judge Adams, which was accorded them. Just what was said or done in that interview and what subjects were discussed between these gentlemen and Judge Adams I do not know. It is possible they talked about the weather and that the question of the renomination of Judge Adams, and his views and opinions or inclinations with reference to the distillery, may not have been mentioned between them. Very considerable opposition to Judge Adams's renomination had developed throughout the state, principally upon the ground of his alleged favoritism to the railroad interests, and his renomination was in great doubt; indeed, when the convention met Judge Adams failed to get the nomination, and his friends, Clarkson and Runnells, only succeeded in controlling thirteen votes in his favor in the Polk county delegation. After the convention and the defeat of Judge Adams, Mr. Clarkson wrote a very mournful howl over Judge Adams's defeat, exceedingly regretting the result. Still there was no opinion filed in the distillery case until the night of the 10th day of September following, when

Judge Adams's name appears as concurring in the opinion written by Judge Beck. These two opinions are very remarkable. The opinion written by Judge Beck and concurred in by Rothrock and Adams assumes the extraordinary position that inasmuch as the law in expressed terms permitted the manufacture of alcohol within the state for medicinal, mechanical, and sacramental purposes, and did not in terms provide for the manufacture within the state for export, therefore it was prohibited by the law.

The opinion of the minority of the court written by Judge Seevers, and concurred in by Judge Reed, assumes the position that inasmuch as the manufacture for the purpose of export was not prohibited, therefore, it was lawful. The opinion of the majority of the court, it was claimed, was contrary to the language and decision of our supreme court in the cases theretofore decided by the court in Niles v. Fries, 35 Iowa, 41, and Becker v. Betten, 39 Iowa, 668. In the former case in 35 Iowa, Judge Beck himself in delivering the opinion of the court uses the following language: "Intoxicating liquors in the possession of a citizen who holds them for the purpose of selling them lawfully, *within the state,* or for transporting them without the state for lawful traffic, are not, under the statute, subject to seizure." Judge Beck gets rid of the force and effect of his prior decision by saying that his language was "obiter dicta." When, however, the opinion comes to wrestle with the question as to confining the police power of the state, to matters that concern the good order of society and the health of the people of the state, but did not extend to the inhabitants of the other states of the Union, Judge Beck gets rid of this suggestion by claiming that there is a sort of comity between the states by which the legislature of one state ought to consider the well being and happiness of the people of the other states. This suggestion is rather fanciful than otherwise, particularly as applied to this case, for that the other states, particularly New York to which this alcohol was exported, have never undertaken to control either the

manufacture, sale, or use of alcoholic spirits. In the interpretation of all statutes and in case of doubt it is a well recognized rule of interpretation that the court must consider what evil it was existing prior to the enactment of the statute that the statute was intended to correct or remedy. The idea that the people of Iowa were seized with a desire to limit the manufacture of alcohol in order to prevent it being taken to New York was simply Utopian and had no real existence. The real parties that were attempting to limit the manufacture of alcohol in Iowa for export was the whisky trust that desired to keep up the price of the article in the New York market, and this fact was well known to the supreme court and to the three judges that concurred in the opinion of the majority. Judge Beck's opinion, aside from the question of law involved, was a very excellent temperance speech against the use of alcohol as a beverage, but had no relation whatever to the case. I write thus freely upon this subject for the reason that Mr. Kauffman and myself had given a written opinion as to the reasonable construction of this law, relying upon the former decisions of our own supreme court and the language of Judge Beck himself. Mr. Kidd had made his investment in good faith in a manufacturing industry, manufacturing an article that was recognized as useful for many purposes, both as a medicine and for mechanical purposes, and there was nothing in the article itself to determine the use for which it was intended when it was manufactured. Whilst it might be used for the purpose of making a beverage destructive to human life and happiness, yet, so far as the law was concerned, it was only by restricting the sale of it for the destructive uses to which it might be applied that any remedy could be made effectual.

The effect of this decision politically, as a means of destroying the faith of the people in a law that the legislature had wisely passed, was soon made manifest. There was at this time in the city of Des Moines a young lawyer, then attorney for the Chicago and Rock Island Railroad Company, ambitious

for political preferment, by the name of A. B. Cummins. His partner in business was Mr. Carroll Wright, the son of ex-Chief Justice Wright who was attorney for Koehler & Lange in securing the opinion of the supreme court that destroyed legally the constitutional amendment. A meeting of anti-prohibition republicans was called and held at the city council chamber in the city of Des Moines about August 25, 1887, in which certain resolutions were adopted denouncing the prohibitory law and favoring local option and licensing of the sale of intoxicating liquors. The resolutions of that convention were signed by ninety-two nominal republicans, and they nominated as their candidates for the legislature A. B. Cummins and Adam Baker. Mr. Cummins accepted the nomination in a letter dated August 25, 1887, writing a letter joining in the denunciations against the prohibitory law of Iowa and the fraudulent practices of the constables who had taken advantage of the law to make profit to their own use.

In addition to this work of the enemies of prohibition in Iowa, performed as its pretended friends and advocates, there were several other causes at work to weaken the confidence of the people in the statute. Two constables of the city of Des Moines set about to make money out of the enforcement of the law. They entered into a conspiracy with the persons who were selling intoxicating liquors, inducing them to put one or two bottles of liquor in a convenient place in their establishments, and then filing information under the law against the place, procuring a search warrant, searching the place and finding these few bottles, prosecuting and destroying the two bottles, no one appearing to claim the same, and then having the costs of the proceedings all taxed up against the county. These bills ran up to hundreds of dollars, and the enemies of the law were loud in their denunciations of the statute, but had little to say against the criminal practices of those whose duty it was to observe and enforce the law.

Mr. Cummins made a vigorous canvass of the county, receiving in addition to the nomination of these so-called repub-

licans, the nomination of the democratic convention, and by the aid of the democratic party and the whisky interests of the county he succeeded in being elected a member of the next general assembly under his oft-repeated pledge during the canvass to secure if possible the repeal of the prohibitory law, and the enactment of the license law.

With all these influences, however, operating against the law, the next general assembly made no serious attempt to repeal the act. By an act approved January 29, 1857, the legislature had attempted to establish what was known as local option in Iowa. The act of 1857 provided for the license and sale of intoxicating liquors in any county of the state where the people by majority vote of the electors adopted the same, and by such adoption that the provisions of the act of 1854 would stand repealed as to that county. Our supreme court held this act of 1857 to be unconstitutional for the reason that our constitution required that all laws should be of uniform operation, and upon this subject of uniformity the court uses the following language:

The sixth section of the bill of rights declares, that "all acts of a general nature shall have a uniform operation." Constitution, Article I. Recognizing as we do the distinction between laws of a general nature and those of a special or local character, we understand by the "operation" of a law is meant its practical working and effect. It is not, in our opinion, a sufficient compliance with the requirements of the constitution, that under the provisions of the act of the 29th of January, 1857, the question of licensing the sale of spirituous liquors is to be submitted to the vote of the qualified electors of all the counties of the state. Something more is contemplated by the constitution, in the words "uniform operation." We must look further, and to the effect of such submission to the vote of the people, and to the consequences to result from the adoption of the law. The prohibitory liquor law is a law of a general nature, and its operation must be uniform throughout the state. Can we say that such is the case, if it remains in full force in one county, while it is repealed in others by a vote of the people, and a license law adopted in its stead? And is the act of 1857, if the effect of it is to bring about this want of uniformity in the operation of

a law of a general nature, to be deemed constitutional and valid? We think not.

The vote authorized to be taken upon the adoption of the act, while it is objectionable in a constitutional point of view, as transferring the law-making powers from the legislature to the people, is further objectionable in view of the possible, not to say the probable, result of such vote. We cannot undertake to determine, nor can it, under any circumstances, be foreseen, that the result of the vote will be uniform in all the counties of the state, either in favor of license or against it. In some of the counties the vote may not be taken; in others, the majority may be against license; while in others, the majority may be in its favor. Unanimity of sentiment, either one way or the other, can hardly be reckoned upon. These views, we think, add weight to the argument against the constitutionality of submitting the act to a vote of the people. We do not, however, base wholly upon them our conclusion against the validity of the act in question, nor upon the fact that the result of the vote upon the question of adopting it may not be uniform throughout the state. Upon this latter branch of the subject, the members of the court are not unanimous in opinion.

The majority of the court are of the opinion, that while the act must without doubt be deemed to be a law of a general nature, it is liable to objection, as prescribing no uniform rule of civil conduct to the people of the state, and as not providing of itself for its uniform operation. The legislative power must command. It must not leave to the people the choice to obey or not to obey its requirements. It is not a law enacted according to the requirements of the constitution, if there is left to the action and choice of the people upon whom it is to operate the determination of a question which may result in a want of uniformity in the operation of a law of a general nature.

I shall take occasion to refer to this decision of the supreme court hereafter when I come to notice the passage by the legislature of the miserable subterfuge now known as the "mulct law."

CHAPTER X

Regulation of Freight and Passenger Tariffs

Leaving the subject of temperance and prohibition for the present, the next important question of a public nature in which I became interested professionally was the question of the regulation of freight and passenger tariffs by the general assembly of the state. The general assembly of 1888 enacted a law providing for the election of three Railroad Commissioners, and gave them authority to prepare schedules of rates that might be charged by the railroads of the state for the transportation of freight and passengers.

Under this statute the people elected as Commissioners Frank T. Campbell, Peter A. Dey, and Spencer Smith. In pursuance of the authority of the statute these Commissioners proceeded to formulate schedules of rates to be charged by the several railroads of the state. The law required the Commissioners to publish for three successive weeks in certain newspapers the date at which these rates should take effect. Before the third publication was made the attorneys of the Northwestern Railroad Company telegraphed to the Railroad Commissioners requesting a change of the date of the taking effect of their proposed schedule of rates, and received from the secretary of the board, under the instructions of Mr. Dey, an answer that the time of the taking effect would be changed accordingly. A new advertisement was prepared and published, but before the three insertions were completed three of the principal railroad companies operating in the state; to-wit, the Northwestern, Chicago, Burlington & Quincy, and the Milwaukee & St. Paul filed their petitions with the circuit court of the United States for an injunction against the further publication of the notice, on the ground that the rates fixed by the

Railroad Commissioners were not *compensatory*. The hearing of this application was had before Justice Brewer at his residence in Leavenworth, Kansas. I was employed by the Railroad Commissioners to appear in their behalf, and Mr. James T. Lain, of Davenport, was employed by certain shippers of that place to appear with me in the case. We argued the case before Justice Brewer, and he granted the injunction on the 28th of July, 1888. This injunction in large part was based upon the evidence of the complainants' general manager to the effect that the Commissioners had adopted a classification known as the western classification, which, as compared with the classification known as the Illinois classification made a difference against the railroads of fifty per cent. Subsequent to the granting of these injunctions, upon complaint of certain shippers the Railroad Commissioners, after a hearing before them, proceeded to formulate new schedules, and in pursuance of what appeared to be the principal objection at the former hearing they adopted a classification more favorable to the railroad companies known as the Illinois classification. Immediately upon this action of the Railroad Commissioners the railroad companies filed a supplemental bill asking a further injunction to restrain the Railroad Commissioners from putting into effect these new rates with the new classification. Mr. Campbell of the Railroad Commissioners immediately waited on me asking my further appearance in the cause to argue the question of a further injunction as against their new schedules and classification. He expressed a doubt as to whether or not it was worth our efforts to defeat this new application as he was disposed to think that Judge Brewer would grant whatever the railroad companies might ask in this behalf. I told him that he had a duty to perform as a public officer, in my opinion, and if the Commissioners did their duty in making the proper resistance to this new application, the responsibility would rest with Judge Brewer if he failed in his duty. We accordingly made the necessary preparation for a hearing, which was finally had at St. Paul, Minnesota. In the

argument of this case the attorneys for the three railroads applying for the injunction made a very formidable array of distinguished counsel embracing the ablest lawyers of Chicago and Milwaukee. A. J. Baker was then Attorney General of the state of Iowa and nominally appeared with me for the Commissioners, but gave me no assistance whatever. We had for an audience in the argument of the case many leading men of Minnesota, members of the State Grange of that state, which association was then in session at St. Paul. I took into the court-room a blackboard that I extemporized for the occasion and taking several copies of the official reports of the railroads in question, I put one copy in the hands of Justice Brewer, holding another copy in my hand and putting the figures upon the blackboard, showing the earnings of these railroads and what they were pleased to call their fixed charges, and demonstrating beyond question that the complaints made of the proposed railroad rates were without foundation. The same person who had made an affidavit in regard to the difference between the Illinois and the western classification had made a new affidavit stating that there was an error in his former computation. I criticised with some severity the reliability of the affidavits in which mistakes occurred according to the convenience and exigencies of this litigation. I had not much confidence in the result, however, but I felt quite complimented when a number of the leading men of the Minnesota Grange, who were present at the argument, made me a complimentary visit at the hotel that evening. The attorney for the railroad company who was expected to make the closing argument in the case complained that he did not feel very well and only spoke about fifteen or twenty minutes in a general way, without going into the facts or figures in the case. My supposed assistant, the Attorney General of the state of Iowa, took no part in the argument, and on my way home that night I learned that he had been in conference with Mr. Stickney of the Chicago Great Western Railroad Company, and had made an arrangement with that

gentleman for employment as attorney for that corporation, to take effect at the close of his then official term which was to occur in a few months. On the 2nd day of the ensuing February, 1889, Justice Brewer filed in the circuit court his opinion refusing the injunction on the supplemental bill and entering an order dissolving the injunctions theretofore granted, at the cost of the complainants. The railroad companies made no further fight against the action of the Railroad Commissioners but acquiesced therein, and found the earnings of their several roads "compensatory."

Concurrent with this proceeding on the part of the Northwestern Railroad Company and the Chicago, Burlington & Quincy, and Milwaukee & St. Paul, the Chicago, Rock Island & Pacific Railroad Company and the Burlington, Cedar Rapids & Northern applied to and obtained from Judge Fairall, of Iowa City, district judge of Johnson county, an injunction against the Railroad Commissioners to the same effect as that issued by Justice Brewer. I appeared with Mr. Lain before the district court and argued a motion to dissolve this injunction before Judge Fairall, which was refused, and from his order refusing to dissolve the injunction we at once took an appeal to the supreme court of Iowa. This appeal was heard and submitted to the supreme court by both printed and oral argument, but after the action of Justice Brewer upon the supplemental bill in the federal court, the attorneys for the Chicago, Rock Island & Pacific Railroad Company and the Burlington, Cedar Rapids & Northern dismissed their suit in the district court of Johnson county, and then applied to the supreme court for an order dismissing the appeal in that court. We resisted this application, but the court held that as the original suit was dismissed the injunction itself necessarily was dissolved, and as the appeal was only from an interlocutory order, the court had no occasion to deliver an opinion upon the merits of the controversy. The opinion of the court permitting these parties to dismiss their suit in this manner will be found in 76th Iowa, 278.

Mr. A. B. Cummins, since Governor of the state of Iowa, has lately been posing as the original friend of the people in this fight against railroad injustice. It would be well to state here that I do not know when he became a convert to the importance of regulating the action of railroads in justice to the people, but as the foregoing was the first great contest we had in Iowa on this subject, I give here a speech delivered by that gentleman as late as December 22, 1891, at a banquet of the Railroad Employees' Club, as follows:

It is the railroad, it is the spirit that has moved and stimulated that property which has made it possible to people in the valley of the Mississippi, which has made it possible to create within the limits of the United States a greater wealth than has any other nation on the face of the earth. I speak of the transportation industry as limited to railways, and so limited, it is instructive to reflect that the railways of the earth are now of the value of something near $33,000,000,000, an appalling sum that no human mind can appreciate, save when compared with some other species of property. The railways of the earth, without reckoning either "wind or water," are equal to one-tenth of all the property of the world. The railways represent substantially one-third of all the invested capital of mankind; and if all the currency of the civilized world and its gold and all its silver and its currency in paper; all its precious stones, its diamonds and rubies were heaped together in such places as would contain them, they would still represent less than one-half of the railway property of the world. The comparisons indicate in what a stupendous enterprise you are now engaged. I have no disposition, whatever, to convert a single sentiment suggested by my brother Wallace, I do not recognize a conflict between the farmers of the nation or the state of Iowa and the railways. No fair man ought to recognize any such conflict, but THAT THE STATE OF IOWA OR THAT HER ORGANIZED TRIBUNALS HAVE DONE INJUSTICE TO THE RAILWAYS AND THROUGH THEM TO THE RAILWAY EMPLOYEES, NO FAIR MINDED MAN CAN DISPUTE. These systems grew up; they most naturally fall into the hands best adapted to organize and handle them, and I would be the last man in the world to claim that, as they grew up, as they were systemized and organized, that wrong was not done here or wrong was not done there. I know too well that

there were grievous complaints justly made against the management of railways not only in this state, but in many others. But I beg the people of Iowa to remember, and the railway employees to remember that, although railway managers and railway presidents may sometimes be unjust, that affords no excuse whatever for the sovereign power of the state of Iowa in being unjust. The wrongs of capital produce, it is said, the anarchist—so it is with respect to the wrongs perpetrated by the railway companies, the railway organizations. They created a prejudice which, in its impetus, has carried the attack made upon the railway property far beyond what is justified by the sober second thought and judgment of those who instituted it, and far beyond the limits which the fair-minded people of Iowa now justify.

The constitution of the United States in express terms gives to the congress of the United States the power to regulate commerce between the states and with foreign nations. In pursuance of this power and duty imposed by the constitution, the congress of the United States in February, 1887, enacted a statute defining the duties and obligations of common carriers engaged in the transportation of freight and passengers between the states, and by express terms gave to the people a right of action in the federal courts against any railroad company violating its duty as defined by the act. This right of action was by civil suit for such damages as inured to the party by reason of a wrongful act of a common carrier.

The Chicago & Northwestern Railroad Company had a main line of road extending from Chicago, in the state of Illinois, located through the state of Iowa to Council Bluffs on the Missouri river. From the main line of this road at Carroll, in Carroll county, this company had constructed a number of branches running northwest from that point, known as the Sac City Branch and the Sioux City and Mapleton Branch. During the year 1890 we brought a number of suits against the Chicago & Northwestern Railroad Company for unjust discrimination and overcharge for shipments of corn and oats from various points on these branch roads to Chicago, and also a number of suits for shipments made at Carroll and points west on the main line of its road. The cases for ship-

ments on the branch lines of its road were settled by the company, and we collected for our clients about $75,000. Suits for shipments on the main line of its road were contested by the railroad company. We tried two of these cases before the United States circuit court at Des Moines, Judge Shiras presiding, and obtained verdicts and judgments in the causes. The railroad company took a writ of error to the United States court of appeals, and these causes were submitted to that court upon both oral and printed arguments at the May term, 1892, of that court, sitting at St. Louis, Missouri. After the causes had been so submitted, Judge N. M. Hubbard who had made the argument in behalf of the railroad company, left St. Louis and went to Chicago for consultation with the general solicitor of that road, Mr. Goudy. After a few days, the court of appeals still being in session at St. Louis, Judge Hubbard appeared before the court, without any notice to me, and had the order submitting the causes set aside and dismissed his appeal or writ of error. After a few weeks had elapsed he sued out another writ of error in the same cases to the United States court of appeals, which, according to the arrangements for the sitting of that court, would be held at St. Paul in the state of Minnesota, and Justice Brewer of the supreme court of the United States would be in attendance as the presiding judge of that court.

It would be too long and too tedious a story to enter into particulars in regard to these suits, and the questions of fact and law involved in them. The unusual and unwarranted conduct of the attorneys for the Northwestern road in getting these cases before Justice Brewer for his decision and determination was by no means a compliment to the judge for whom they manifested such a strong partiality. Neither would I indulge in any surmise as to the grounds for their partiality. It is sufficient to say they were not disappointed in the result and that Judge Brewer reversed both of these judgments.

I afterward determined if possible to obtain the opinion of the supreme court of the United States upon the questions of

law involved in these cases. I accordingly brought another suit for another client; to-wit, one E. M. Parsons, in a case involving an amount sufficient to entitle me to an appeal directly to the supreme court of the United States, having previously attempted to get the supreme court of the United States to review the decision of Justice Brewer in the former cases upon writs of certiorari, the same being denied by the supreme court. Judge Shiras, presiding in the circuit court at Des Moines, in view of the action of the circuit court of appeals in the other cases, sustained a demurrer pro forma to my amended petition filed in the Parsons case, and it was upon demurrer admitting the averments and allegations in this petition that the case was heard before the supreme court of the United States. Justice Brewer delivered the opinion in the Parsons case in which he held that the statements of the petition did not entitle the plaintiff to recovery. The opinion discloses the fact that Judge Brewer was somewhat offended at my attempt to have the supreme court pass upon the questions of law involved in the cases that he had disposed of as the presiding judge in the court or appeals. I had supposed that a judge of the supreme court of the United States would regard it rather as a compliment than otherwise to his sense of fairness to believe that he was capable of impartially and without prejudice, sitting with his brother judges, to review one of his own decisions, but the opinion shows plainly that I overestimated that distinguished jurist, and that he thought more of his infallibility than I did of his impartiality. This opinion of the court will be found in the case of Parsons vs. The Chicago & Northwestern Railroad Company in volume 167, *United States Reports,* 324. The court in this opinion asserts the very extraordinary position that the Interstate Commerce Law in providing a remedy whereby a shipper of grain might recover his actual damages for a refusal of the railroad company to comply with the law which was enacted for his protection, was in the nature of a penal statute, and that the petition of the plaintiff in such a case must expressly aver and negative the

existence of any possible excuse for the wrong committed by the railroad company.

One great benefit to the public of these suits against the Chicago & Northwestern Railroad Company was to arouse public attention to the necessity of further legislation by congress in order to carry out the design of the original act for the protection of the public. Congress had already by amendment to the act provided for penalties against any parties violating its provisions, but the suits that I brought were simply for actual damages and injuries, and not for any penalty whatever under the law. The penal clause in the act as amended March 2, 1889, reads as follows: "That any common carrier subject to the provisions of this act, or, wherever such common carrier is a corporation, any director or other officer thereof, or any receiver, trustee, lessee, agent, or person, acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willfully suffer or permit to be done, any act, matter, or thing in this act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in this act required to be done, or shall cause or willfully suffer or permit any act, matter or thing so directed or required by this act to be done not to be so done, or shall aid or abet in such omission or failure, or shall be guilty of any infraction of this act, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed five thousand dollars for each offense: Provided, that if the offense for which any person shall be convicted as aforesaid shall be an unlawful discrimination in rates, fares, charges, for transportation of passengers or property, such person shall, in addition to the fine herein provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the

court." The charge of Judge Shiras to the jury in the two cases tried before the United States circuit court, before referred to, will be found in full in volume 48 of the *Federal Reporter,* commencing on page 50, and the opinion of Justice Brewer, presiding in the circuit court of appeals, before referred to, in which he reverses these judgments, will be found in the 10 U. S. court of appeals on page 430.

It may be interesting to any law student and to anyone who desires to determine where right and justice should have prevailed, to compare the charge of Judge Shiras to the jury and the principles of law recognized by Judge Shiras, with the opinion of Justice Brewer. It is not within my purpose to reargue any of my causes in this paper.

It is sufficient to say that the supreme court held the provisions of the inter-state commerce law, that gave to shippers a remedy for unjust discrimination by a civil suit for damages, to be a penal statute upon the ground that if the railroad company discriminated by charging one person ten dollars for a particular service and charged another person twenty dollars for a like service, then a suit to recover back the ten dollars thus unjustly demanded and received by the railroad company was in the nature of a statute to recover a penalty. Upon this mode of reasoning a suit against any person or corporation who unjustly and unlawfully gets possession of my money, for the purpose of recovering back what they illegally obtained, would come under the head of a suit to recover a penalty. The trouble with the supreme court of the United States has been that they have uniformly regarded this legislation by congress to protect the people against unjust charges and discriminations as intended to punish the railroad companies of the country, and the court has felt called upon to protect the railroads from legislation interfering with their absolute control over their freight and passenger traffic. The court has assumed the role of a conservative element in the government, intended for the protection of railroad property against the legislative power of the country.

CHAPTER XI

Des Moines River Land Titles

The next important litigation in which I was engaged during my professional career, of public interest, was my engagement by Roswell S. Burrows, one of the original stockholders of the Des Moines Navigation Company, in suits growing out of his ownership of certain lands belonging to the Des Moines river grants, so-called. I will not undertake in this paper to go into a detailed history of the Des Moines river titles, so-called. Colonel C. H. Gatch some years ago prepared for publication a series of articles that were published in the *Annals of Iowa,* Volume I, that gives a detailed account and history of the land grant by congress, and the various decisions of the United States land department construing the original grant of 1846, and also the decision of the supreme court of the United States in the numerous cases from time to time decided by that court. I deem this the most correct and just account of this important litigation that has ever been given to the public. Honorable B. F. Gue also published in his *History of Iowa* what purports to be an account of the various decisions and rulings of the land department and of the actions of the courts with reference to these lands. A part of his history is correct, but in treating of the rights of certain of the settlers he has done great injustice to the stockholders of the Des Moines Navigation Company who furnished the money to the company for the purchase of these lands. The first unwarranted statement contained in Mr. Gue's history is that persons who brought and maintained suits for possession of their lands against certain settlers were mere speculators who had bought a doubtful title to these lands for a song. The contract between the state of Iowa and the Des Moines Navi-

gation Company, whereby that company became interested in certain lands of this grant, was made in 1853, after the state had disposed of the larger part of the lands lying below the Raccoon fork of the Des Moines river, and was made at a time when there was no question as to the right of the state to the lands above the Raccoon fork to the northern boundary of the state. Under this contract the company paid to the state, upon the execution of the agreement, over $60,000 in cash for the purpose of enabling the state to pay the indebtedness that had been incurred by the board of public works up to that time. The contract provided that the company should continue the work under supervision of a state engineer and commissioner, chosen by the state of Iowa, and should advance the money to pay, as the work progressed, a specific amount per cubic foot for stone work, excavation, timbers, and other material furnished in the construction of the locks and dams. Estimates were to be made from time to time by the engineer of the work of the amount expended by the company at the prices named in the contract, and as fast as $30,000 was so expended the company was to receive lands at $1.25 per acre. At the time this contract was made it had been found impossible to sell and dispose of the lands by the state commissioners rapidly enough to get money to pay the contractors who theretofore had been doing the work under contracts with the commissioners. The only difference between the Des Moines Navigation Company and the contractors engaged in this work was that the former now agreed to furnish money in advance to pay off the old unpaid obligations of the commissioners, and agreed to advance money as it was needed and take the lands in gross at $1.25 per acre as fast as each additional $30,000 were advanced and expended on the work. In the summer of 1857 the company made a demand on Mr. Manning, commissioner of the Des Moines River Improvement, to certify to them additional lands on certain estimates made by the engineer, which Mr. Manning refused. They accordingly brought suit against the commissioner ask-

ing of the court a writ of mandamus to compel him to certify the lands shown to be due them by the certificate of the engineer. I have already referred to this suit in the former part of this paper. I was employed by Mr. Manning and defended against it upon the ground chiefly that before the company could maintain suit for specific performance it was necessary for them to show that they had in all respects complied with their various contract obligations toward the state. The main provision of the contract that the commissioner claimed had not been complied with related to the progress of the work; that is to say, one-fourth of the entire contemplated improvement between the Raccoon fork of the Des Moines river and the Mississippi river had not been completed. The company, being defeated in this application for mandamus, ceased work upon the improvement, and in the winter of 1858 a settlement was made between the state and the company. This settlement was more especially brought about by those who had organized a railroad company for the purpose of building a railroad from Keokuk up the valley of the Des Moines river. This organization was known as the Keokuk, Fort Des Moines & Minnesota Railroad Company, and they desired a grant from the state of the remaining lands of the grant to aid them in the construction of their railroad. The basis of the settlement between the state and the Des Moines Navigation Company was simply that the company should receive a conveyance from the state for the lands that had been certified to the state under the grant up to that time, and that had not been heretofore disposed of by the state, or certified to the company, amounting to about 37,500 acres, and should pay to the state $20,000 in addition to the money already paid and expended on the improvement, and should surrender and cancel their contract and right to any further lands of the grant. (The terms of this settlement are contained in a joint resolution of the seventh general assembly, found on page 425 of the acts of that session.) At the time of this settlement there was no question by anyone as to the extent of the grant and

the validity of the title of the state to the alternate sections five miles on either side of the river up to the northern boundary of the state.

In pursuance of the settlement proposed by the joint resolution which was accepted by the company, Governor Lowe on May 3, 1858, executed fourteen deeds or patents to the Navigation Company, conveying by particular description the lands to which the company was entitled under the resolution of compromise; and on May 18, 1858, a general deed conveying the same and any previously omitted lands by general description.

Another disturbing element in regard to the title to the lands arose under the grant of congress made in 1856 to the state of Iowa, to aid in the construction of certain lines of railroad crossing the state and having their initial point at the Mississippi river, and crossing the Des Moines river at various points between the Raccoon fork and the northern boundary of the state. These railroad companies raised the question as to the validity of the title of the Des Moines Navigation Company to the lands they had purchased from the state north of the Raccoon fork of the river. The Dubuque & Sioux City Railroad Company brought suit, or rather induced Litchfield to bring suit against them for lands lying within the line of their grant under act of 1856, or rather that would have been within their grant if not reserved from its operation or that had not been granted for the improvement of the Des Moines river. This suit was adroitly managed on the part of the railroad company so as to avoid testing any question of its title, and contained a stipulation that the company was in possession of the land under their grant and the court was only called upon to decide the extent of the grant under the act of 1846 to the state for the improvement of the river, and the supreme court of the United States decided that the act of 1846 did not grant to the state for the improvement of the river any lands north of the Raccoon fork. This decision was made at the December term, 1859, and is found reported

in 23 Howard, S. C. U. S., page 66. The act of 1856, making the grant to the state for the purpose of aiding in the construction of these railroads, in express terms reserved from the operation of the grant any lands that had been theretofore reserved by any competent authority under any other grant of congress. The announcement of this decision created considerable excitement in the Des Moines valley, and the river lands above the Raccoon fork that had theretofore been deeded by the state to the Des Moines Navigation Company and had been by that company divided among its stockholders in consideration of the moneys that they had advanced to the company, and had been paid by the company to the state as before stated, were considered the lawful prey of every adventurer who could induce the local land offices to allow them to locate a land warrant upon any of these lands.

Another class of persons, however, were deeply interested in the question of this title. Prior to the contract made with the Des Moines Navigation Company the state of Iowa had sold some fifty thousand acres or more of these lands located above the Raccoon fork of the river, and many of these lands were occupied by actual settlers who had made improvements thereon and had paid the state valuable considerations for their title. To avoid the hardships that must otherwise have resulted from the decision of the supreme court, congress on March 2, 1861, passed the following joint resolution: "Resolved, that all the title which the United States still retain in the tracts of land along the Des Moines river, above the mouth of the Raccoon fork thereof, which have been certified to said state improperly by the department of the interior as a part of the grant by act of congress approved August 8, 1846, and which are now held by bona fide purchasers under the state of Iowa, be, and the same is hereby relinquished to the state of Iowa."

The congress of the United States further on the 12th of July, 1862, passed an act in express terms extending the grant to the northern boundary of the state, and providing that such

lands "be held and applied in accordance with the provisions of the original grant, except that the consent of congress is hereby given to the application of a portion thereof to aid in the construction of the Keokuk, Fort Des Moines & Minnesota Railroad, in accordance with the provisions of the act of the general assembly of the state of Iowa, approved March 22, 1858."

At the December term, 1866, the supreme court of the United States, in the case of Samuel Wolcott vs. The Des Moines Navigation Company, reported in 5 Wallace, page 681, made a further decision confirming the title of the Des Moines Navigation Company under the acts of congress of 1861-2, to the lands that had been deeded to them by the state of Iowa as before recited, and further deciding that the lands within the five mile limits of the Des Moines river had been reserved by competent authority for this work of internal improvement at the time of the passage of the railroad grant of 1856.

Mr. Gue in his history of Iowa unfortunately attempts to disparage the title of the stockholders of the Des Moines Navigation Company by stating they were mere speculators who had purchased an impaired title, and were therefore entitled to no consideration. On the contrary, the men who received these deeds directly from the Des Moines Navigation Company were stockholders who had advanced their money in payment of their stock, which money had been paid over by that company directly to the state.

Soon after the decision of the supreme court in the Litchfield case in 1859, a suit was brought in the circuit court of the United States for the southern district of Iowa, asking an injunction against the local United States land officers at Fort Dodge and at Des Moines, to prevent them from receiving and recognizing any location or purchase of these reserved lands. The reservation of the land affected not only the lands within the railroad grant, but affected the right of any person to locate upon or purchase these lands from the United States, as they were not lands subject to settlement or entry. Justice

Miller heard this application for an injunction, and an argument was filed by the authorities in Washington claiming that the proper officers of the land department had the sole authority to determine the question as to whether or not these lands were subject to location and entry, and that the question of the effect of such location and entry could only be decided by the courts, after entries were made and patents granted; that if the lands were not legally subject to entry as to any person claiming them, the action of the land officers would be void, and a court, if called upon by the owner, could cancel any patent or other evidence of title illegally issued. Justice Miller, after the full argument of the case, sustained this view of the case and held that the only remedy for parties claiming these lands under the act of 1846, and the subsequent act of 1861-2, was to apply to the court for the cancellation of any titles wrongfully issued by the land department or by the President. In accordance with this view of the case a number of suits were brought by the grantees of the Des Moines Navigation Company, who received their titles from the company in consideration of the moneys they had advanced as stockholders, and the supreme court of the United States, upon appeal to that court, cancelled a number of entries and patents that had been wrongfully issued. An attempt was made to make a distinction between the Des Moines Navigation Company and individuals who had purchased the lands from the state of Iowa, and settled thereon.

Mr. Gue in his history of Iowa claims that the act of congress of 1861 was only intended for the protection of those purchasers from the state who had actually settled upon their lands and made improvements thereon, and that congress in using the words "bona fide purchasers from the state of Iowa" did not include in those words citizens or residents of the state of New York who had bought their lands in good faith from the state of Iowa. The supreme court of the United States in the very purpose of its organization was intended by the constitution to organize a judicial body or tribunal before which

all citizens of the United States should be equal before the law, without regard to the state in which they had their residence or location. There was no question about the fact that the Des Moines Navigation Company was a bona fide purchaser of these lands. At the time that they paid their money and took a conveyance from the state of Iowa, the stockholders of that company honestly believed they were getting a good and perfect title and were paying out their money for same in the utmost good faith. The statement of Mr. Gue in his history before referred to, that the persons who received deeds for these lands from the Des Moines Navigation Company were mere speculators, purchasing for a song a doubtful and disputed title, is wholly without foundation and fact, and the denunciation of the supreme court of the United States because the court made no distinction between bona fide purchasers because of their location or residence, very greatly mars the reliability and impartiality that ought to have been characteristic of this history of Iowa. Mr. Gue was a resident of Fort Dodge, where for years the atmosphere of that locality was permeated by the passion of men who had been disappointed in their attempt to secure a title to lands that they all knew before and at the time of the location and attempted entry on the same, had already been sold for a valuable consideration by the state of Iowa. The opinion of the supreme court, delivered by Justice Miller in the case of Williams vs. Baker, reported in 17 Wallace, 144, contains an accurate and clear exposition of this entire controversy, which fortunately was settled by the supreme court of the United States, and to which they have continuously and consistently adhered. Long after the diversion of the remaining lands of this grant to the Keokuk, Fort Des Moines & Minnesota Railroad Company, the Iowa Homestead Company, grantee of the Dubuque & Sioux City Railroad Company brought suit for a portion of these lands embraced in the river grant above the Raccoon fork, and attempted to disturb the title. In the meantime the Keokuk, Fort Des Moines & Minnesota Railroad Company had

mortgaged these lands for the purpose of continuing their road from Des Moines to Fort Dodge. On the foreclosure of this mortgage these remaining lands were sold to a company known as the Des Moines & Fort Dodge Railroad Company, organized for the purpose of owning and operating that portion of the old Des Moines Valley road that had been constructed between Des Moines and Fort Dodge. On the foreclosure of this mortgage I had represented Martin Flynn and a number of the other contractors, for whom I had filed a mechanics' lien for work done and material furnished in the construction of the road north of Gowrie. I succeeded in obtaining a provision in the decree of foreclosure making these liens paramount to that of the mortgage, and when the road was purchased by the new organization called the Des Moines & Fort Dodge Railroad Company they were compelled to pay off Flynn and these other lien holders in order to secure their title. This new railroad organization elected Mr. Charles Whitehead, an attorney of New York City, its president, and I received from Mr. Whitehead a telegram asking if I could be retained as general attorney of their road. I replied that upon the receipt of a draft for five hundred dollars I would accept of the same as a general retainer. One object, I think, that the company had in desiring my services was to secure some one familiar with the question of the title of these Des Moines river lands that the new organization had bought in connection with this other part of the road.

The last contest over the title was the case of the Iowa Homestead Company claiming the title under the railroad grant of 1856. It was the case of the Iowa Homestead vs. The Des Moines & Fort Dodge Railroad Company, reported in 17 Wallace, 84. Mr. Gue, in his history of Iowa, makes a special point as to the hardship visited on one of the settlers by the name of Crilley. I was attorney for Mr. Burrows in that case. Mr. Crilley first attempted to locate a warrant upon a tract of land near Fort Dodge prior to the decision of the supreme court of the United States in the Striker case. He

was refused permission to make any such location or entry and was distinctly informed by the local land officers that the lands belonged to the Des Moines river grant. After the decision in the Striker case in 1859 and after the settlement between the state of Iowa and the Des Moines Navigation Company and the payment of the last $20,000 of the consideration, and after the execution of the deeds and patents by the state to the Des Moines Navigation Company, Crilley succeeded in inducing the local land officers to allow his location, and ultimately obtained a patent through their influence, signed by the President. The circuit court of the United States declared his patent void and decreed cancellation of the same. He took his appeal to the supreme court at Washington and that court affirmed the decree. The judges of the circuit court at Des Moines permitted Mr. Crilley, by his attorney, then to file a claim for his improvements under the occupying claimant law of Iowa. Commissioners were appointed and his improvements were valued at a very liberal amount, far in excess of their real value or cost. Mr. Burrows paid the money into court and Crilley received the same, but after he received pay for his improvements he still refused to vacate the land. A writ was issued to dispossess him, and upon the service of the writ by the United States marshal, Mr. Crilley presented a loaded revolver to the deputy marshal and threatened his life. The marshal thereupon returned to Des Moines and secured authority to arrest Mr. Crilley, which he did, and Mr. Crilley was actually detained in prison for several weeks and until he agreed peaceably to surrender possession of the land. This is the whole story of the inhumanity out of which Mr. Gue's history of Iowa makes a case of such extreme cruelty and hardship.

That this controversy over the title of the Des Moines river grant was a most unfortunate one, both for those who purchased the lands from the state and those who attempted to purchase them from the general government after the state had sold them, there can be no question. It was also very

detrimental to the settlement of that part of the state. The squatters or settlers made very indifferent improvements and very indifferent cultivation of the land, and seldom if ever paid any taxes. After the title of the Des Moines Navigation Company and its stockholders and grantees had become fully settled, the counties where these lands were located levied taxes upon the same, and suits were brought against the Des Moines Navigation Company and its grantees. The supreme court of Iowa held that from the date of the joint resolution of 1861 the title to these lands inured to and became perfect in those who had purchased and taken their deeds from the Des Moines Navigation Company, and held them liable for the taxes that had been assessed from the date of that joint resolution of 1861.

I continued to act as attorney for the Des Moines & Fort Dodge Railroad Company for about ten years. I was not, however, employed upon a salary, but only after my general retainer charged that company from time to time for services actually rendered, and charged them as I did any other client.

CHAPTER XII

A. O. U. W. Controversy

One other case of some notoriety and public interest in which I was engaged in the latter years of my practice was the controversy between the two branches of the Ancient Order of United Workmen. It seems that the Grand Lodge of this organization had adopted an amendment to their plan of organization by which in case of extraordinary loss and liability occurring in any locality, and within the jurisdiction of some subordinate state lodge, the members of lodges in other states might be assessed and required to contribute for the payment of such extraordinary losses. A portion of the members in the state of Iowa refused to recognize this requisition and seceded from the organization as a national body, and organized another state lodge by the same name, Ancient Order of United Workmen, and incorporated themselves under the general provisions of the law of Iowa for the organization of benevolent societies, repudiating any connection with the national lodge. Those who adhered to the national organization still continued, however, to do business by their old name and under their former organization as adherents of the national body. The new organization, relying upon their incorporation as giving them some special advantage, brought suit in the district court of Dubuque county for an injunction against this old organization adhering to the national body, and sought to perpetually enjoin them from the use of the name "Ancient Order of United Workmen," or the initials "A. O. U. W." Upon the trial of this case on demurrer in the district court in Dubuque, I sought to obtain a continuance of the hearing on the ground of my ill health, having been confined to my room and my bed for some three weeks. The judge of the district court granted

a continuance only for a few days. I went to Dubuque, however, and made a three hours' argument in the case, sitting in my chair, not having strength to stand upon my feet. The court granted a perpetual injunction against my client. An appeal was taken immediately to the supreme court and an interlocutory order obtained staying the injunction until the case could be heard in that court. On the final hearing and trial the injunction was dissolved, and the right of my client to use and do business under the title of "Ancient Order of United Workmen" was successfully maintained. This decision is fully reported in supreme court reports, 96 Iowa, 592.

CHAPTER XIII

Important Events in Career

It will be necessary now to go back a few years in order to record certain events important in my personal career.

In the summer of 1880 James A. Garfield received from the republican national convention at Chicago the nomination as candidate for President of the United States. At that time the states of Indiana and Ohio continued to hold their state elections early in the month of October, and the result of the elections in those two states in October had a most important and almost controlling influence upon the result of the presidential contest at the ensuing November election.

Early in September of that year I received from the state central committee of the state of Indiana an invitation to accompany ex-Governor Kirkwood of Iowa in a canvassing tour of two weeks, which invitation I accepted. We had a very agreeable and enjoyable trip. Governor Kirkwood was a very companionable man and was received with much honor and enthusiasm, and our meetings were largely attended and were quite successful. Part of the time we did not speak together at the same meetings, but had separate appointments assigned us. At one point where there existed a considerable manufacturing industry, the local committee waited upon us at our hotel before the speaking, and suggested that they desired us to especially discuss the tariff question and its effect upon our American manufacturers. After the committee had retired Governor Kirkwood walked the floor of the room for a few minutes, and turning suddenly upon me he said, "Charlie, do you understand this tariff question?" I told him no, I knew very little about it. "Well," he said, "I was raised a democrat and am not much of a tariff man anyhow, and I want you

to take up this tariff question if either of us must." I told him that I could talk about the general effect of protecting American labor and the duty of the American congress to so arrange the tariff upon imports as to relieve our people from competition with the low wages paid in Europe; that the American laborer must receive higher wages than the European laborer for he must educate his children and must enjoy better conditions in life, and as our free institutions were based upon the intelligence of the voter, we could not afford to allow the laboring man to occupy the position socially or politically of the European laborer; that I could talk along that line all they wanted, but when it came to discussing schedules or specific duties I should not venture upon any such discourse; in fact, I was satisfied that few people understood the subject sufficiently to discuss the detail of tariff duties with intelligence. I filled the bill accordingly, as Governor Kirkwood placed that part of the program in my charge, but he himself did not say "tariff" once.

At Indianapolis we attended a grand rally at which Roscoe Conkling, of New York, was the principal orator of the day. The managers had arranged for a grand parade, and the Governor with myself and several other gentlemen were assigned to a carriage that was to take prominent part in the procession. Conkling had arrived, it seems, early in the day, and the procession was delayed for over an hour waiting for that distinguished gentleman to complete his toilet before making his appearance in public. The streets and the balcony of the hotel were lined with ladies in their holiday attire, and as the procession passed by we heard frequent inquiries from the finely dressed maidens as to which was Conkling, and when he was pointed out to them they were enthusiastic in their declarations that he was a handsome man. I was introduced to Mr. Conkling in the corridor of the hotel, after his speech, and was shocked and surprised at his want of courtesy and decent manners. He was there for the purpose of advocating the election of Mr. Garfield, and adding if possible enthusiasm to the occa-

sion, and yet openly in the hearing of the crowd he was cursing the folly of the convention in nominating Mr. Garfield instead of renominating Grant for the third term. A more arrogant and conceited public man it has never been my misfortune to meet.

An incident occurred the following Sunday morning more pleasant to record. I got up very early, and going down to the lower portico of the hotel I found a few persons astir. I felt somewhat lonesome and seeing a well dressed, intelligent looking colored man on the pavement, I entered into conversation with him in regard to the political situation, and asked him whether or not the colored men of the city would not all support Mr. Garfield, the republican nominee. To my surprise he said, "No, sah, some of them will vote the democratic ticket." I said to him, "How is it possible for a colored man to support the democratic ticket in view of the history of the past twenty-five years? The colored race have been emancipated and enfranchised and made equal before the law through the efforts of the republican party of the nation. How, then, can any of your people support the democratic party?" "Well, sah," said he, "in some respects a colored man is very much like a white man." Said I, "What do you mean by that?" "Well, sah," said he, "I'll tell you. Occasionally, sah, you will find a colored man that is a damn fool." I saw a twinkle in his eye and realized that he was intending his reply for a joke. I immediately offered him my hand and shook hands with him heartily, telling him that since there were so many white men of that kind I supposed it would be unreasonable not to expect occasionally a colored man that was a fool.

Upon my return to Iowa after the October election in Indiana I made a speech in the opera house at Oskaloosa, Iowa, and the gallery was filled with colored men, many of them from What Cheer, a mining district near Oskaloosa. I related to them the particulars of my interview with the colored gentleman of Indianapolis. They enjoyed it hugely and gave me rounds of applause, and I told them I hoped that in some re-

spects they would not be like the few that were back in Indiana.

After the election of Mr. Garfield, Governor Kirkwood was appointed Secretary of the Interior, and as I had official business before the supreme court that summer I visited Washington City in company with my wife, and spent a pleasant two weeks admiring the wonders of the national capital. Bishop Andrews, of the Methodist Episcopal church, had been for a number of years a resident of Des Moines and our near neighbor on Fourth street, and in company with his excellent wife Mrs. Nourse had a very enjoyable time. Governor Kirkwood also arranged that we should attend a private reception of the President and his wife, and Mrs. Nourse enjoyed the privilege of quite a tete a tete with the President's lady, officially known as the first lady of the land. When my wife bid her good evening she shook hands with her and expressed the hope that she would be very happy in her new position. Mrs. Garfield was rather a sad faced person and responded in a tone almost prophetic, "I hope so. We do not know." Afterwards upon the assassination of Mr. Garfield I was called upon to take part in a meeting held in the Baptist church in Des Moines, commemorating the memory of that excellent man. I found in my wife's scrap book some years afterwards a newspaper clipping containing a report of the remarks I made on that occasion which I here insert:

For the past five days our nation has been in mourning and the Christian civilization of the world has sympathized with us in our bereavement. By official proclamations, by public meetings and resolutions, by draping our homes and places of business and houses of worship with the emblems of mourning, we have sought to give expression to our sorrow and to testify our appreciation of our noble dead.

Tomorrow the whole nation is to attend upon his burial and the day is set apart as sacred to his memory. And yet with all this we cannot restore the life that has been so wantonly destroyed. Death is inexorable, and we can do nothing for him who has gone out from the shores of time forever.

But in a better sense of the word Garfield is not dead. So long

as we cherish the manly virtues of which his life was the exponent, so long as we remember the trials and sacrifices of his boyhood, the labors and successes of his riper years, the heroism, faith, fidelity of his life, and the calm triumphant heroism of his death, so long will he live to us and to the nation, and so long may we be profited by his life.

I can think of no better text this morning for profitable consideration than one of the many rich gems of thought he has left us out of the storehouse of this great heart and intellect. At the graves of the fallen heroes of the late war he expressed this sentiment, "I love to believe that no heroic sacrifice is ever lost, that the characters of men are molded and inspired by what their fathers have done, that treasured up in American souls are all the unconscious influences of the great deeds of the Anglo Saxon race, from Agincourt to Bunker Hill."

In the oldest book of the Book of Books the patient man in his deep affliction asks the question, "If a man dies shall he live again?" This question refers primarily to man's immortality, but we may dwell upon it in its other meaning, this morning, as relating to the silent and unconscious power and influence of the life and example of the one whom we say is dead.

And think what a treasure we have in the memory of this man. Others have challenged the admiration of the world because of their great abilities. Others have been brave in war and wise in counsel. Others have been heroes and statesmen, and we have honored them and done homage to their greatness, but this man was not only great and wise and brave, but a good, true and pure man also, and the nation loved him. We give honor to his greatness, we give the tribute of praise to his great abilities and his great achievements, but we bring tears and heart throbs to the tomb where manly virtue, purity, and faith are to be enshrined. How much there is in the life of this man that we would wish to bring into the everyday life of our homes. Here is the model of a life from which we would have our children mold their own future, no blemishes to record, nothing to apologize for, nothing to cover up — it stands out in its moral perfection and beauty — in its intellectual strength and greatness — in its religious faith and fervor, a fully developed manhood — a complete character — a perfect pattern.

Do you want an inspiration for your child? Repeat to him the story of this man's youth, of his struggle with poverty and adversity, without influential friends or fortune. Do you want to teach the

young men of the nation the value of sincerity, honesty, earnestness, and truthfulness in the affairs of life? Here is the demonstration and the proof that even in American politics and American statesmanship, dishonesty, deceit, and duplicity are not necessary to success. Do you want to rebuke the conceit of the would-be learned who teach our young men that the religious faith that their mothers taught them is somehow a reproach to their intellectual progress — we have here a man of the broadest culture, of the strongest intellectual grasp and development, whose religious faith was the very basis and strength of his greatness and intellectual power.

CHAPTER XIV

The Brown Impeachment Case

The discussion of law cases and the questions of fact and of law that they involved may be a little tedious to a non-professional reader, but they constituted so large a part in my life that it is impossible to give much of an account of myself and what I have been doing for so many years past, without at least a brief account of the nature of the suits in which I was engaged as counsel.

Probably the most important case in which I was engaged during my professional career was the celebrated impeachment case against John L. Brown, Auditor of the state of Iowa.

Mr. Brown was first elected to the office of Auditor of State in October, 1882, and took his office the following January. One of the important duties of this office was the duty of having the insurance companies, organized under the laws of Iowa and doing business in the state, examined from time to time to ascertain if they complied strictly with the law, and if their reports made to his office were just and true, and their business conducted in such a manner as to insure their solvency and ability to pay the losses of their policy holders. There had been in the state of Iowa for a number of years a number of failures of companies that were organized without capital and without experience or strict integrity upon the part of those who sought to insure the property of others, some of them having none of their own. I remember one insurance company organized in Des Moines by an enterprising young lawyer, without means, who obtained the names of a number of persons that he claimed had subscribed stock to his company. The law required twenty-five per cent of this stock to be paid up before the company was entitled to do business. The gentleman, of

course, elected himself president of the company, and he drew his drafts upon the supposed subscribers to stock for the twenty-five per cent that the law required should be paid up, to constitute the capital of the company. He took these drafts to B. F. Allen, then a prominent banker in western Iowa and doing business in Des Moines, and deposited his drafts and obtained from Allen a certificate of deposit for so much money. This he exhibited to the Auditor of State, and upon the faith of this certificate of deposit obtained authority to transact business. His drafts were all dishonored so that he was proceeding to do business without any capital whatever, and actually issued some policies. It was only necessary to incur a loss to complete the bankruptcy of the concern. Of course the foregoing is an extreme case, but it illustrates how easily the law was evaded and how absolutely necessary it was to have a strict supervision of these companies that could incorporate themselves under the general insurance company laws of the state.

Mr. Brown had been a soldier in the Civil War and had lost an arm in its service, was very upright, and a downright man, and did not depend upon his suavity of manner for his success in life. He was a man of quick temper and abrupt manners, but was sensitive of his honor and at all times conscious of his integrity of purpose. In pursuance of his official duty he felt the necessity of strict supervision and a thorough examination of the insurance companies of the state, that had sprung up in almost every important town and city in the state, and the officers and directors of the different companies were not paying much attention to the detail of the affairs of their companies and would generally entrust the business to the persons who had organized the company and become its president and secretary. In selecting a person who could make these examinations with fidelity and thoroughness he deemed it necessary to engage some one who was not a resident of the state and who would not probably be influenced by local or political consideration in the discharge of his duties. He em-

ployed as chief examiner of these companies a gentleman who resided in Chicago, and whose reputation was beyond question as an expert, by the name of H. S. Vail. This gentleman charged for his services twenty-five dollars a day for the time actually engaged, and in addition thereto some five to ten dollars for assistant accountants. The law provided that the expenses of these investigations should be approved by the Auditor, and upon his certificate the several companies examined were required to pay the bill. These examinations proved to be very expensive in some cases, and perhaps in a few cases an unnecessary burden and expense to the companies, but the real cause of complaint was that the expert found many irregularities, and without fear or favor, reported them in writing to the Auditor for his action. In one case the president of an insurance company had been electing his board of directors by stock issued to himself, upon which he had not paid a dollar into his treasury, and was paying himself out of the limited income of the company the handsome sum of ten thousand dollars a year as president, and his son-in-law three thousand dollars a year as attorney of the company. In a number of cases the president of the company was found to have issued to himself stock upon which he had not paid a dollar, and the Auditor required all of these and many other like delinquencies to be corrected.

He was visited by the friends and attorneys of these officers who were thus disturbed in their operations, and the Auditor was not found to be a very complacent or accommodating individual, but on the contrary an outspoken, determined, and unyielding man in the discharge of what he conceived to be his duties. The last resource of these afflicted insurance officers was an appeal to Buren R. Sherman, then Governor of Iowa, formerly filling the office of Auditor of State and under whose administration these insurance men had been undisturbed. He found Mr. Brown equally obdurate and unwilling to palliate or in any way overlook the delinquencies of these insurance companies, but he determined to afford his

friends some relief, and upon the re-election of Mr. Brown as Auditor of State in the fall of 1884, he sought an excuse for refusing to approve of the official bond that Mr. Brown presented to him and which was necessary to the qualification of the Auditor for his second term of office. The first pretense of Sherman for refusing to approve the Auditor's bond was that Mr. Brown had not complied with the law in making report to the Treasurer of State as the law required of the fees of his office. As it turned out in the evidence on the trial, and as Sherman well knew the fact to be, the fees of the office had been reported and accounted for as the statute required, save only that the aggregate amount of the fees as shown by the fee-book in the Auditor's office had been reported and accounted for at the end of each month, and the details specifying from what source each item was received was not copied from the fee-book in the Auditor's office and filed with the State Treasurer. In addition to this the Governor also obtained information from a discharged clerk in the Auditor's office that the clerks in the office frequently received compensation of small sums for giving information and collecting statistical matter at the request of individuals where no official duty was enjoined by law upon the Auditor or his assistants and no fee was prescribed. As no account was kept of these small sums of money and they were paid to the clerk who did the voluntary work for persons requesting it, no statement could be made of the amounts or dates, or the services rendered.

In the meantime the controversy spread, the insurance companies through their officers and agents taking an active part as against Mr. Brown, and Mr. Sherman becoming more and more arrogant. He finally determined to remove Mr. Brown from office.

We had upon the statute book a law whereby the Governor of the state was authorized to suspend a subordinate officer, if indeed there was any such thing as a subordinate officer under our constitution, by appointing a commission to exam-

ine his books and papers and the affairs of his office, and if, upon making such report to the Governor, it was apparent that the public safety required a suspension of the officer from official duties, he might issue such order of suspension. Sherman found three men willing to do his bidding in this respect and appointed them commissioners to examine the affairs of all the state officers. The commissioners understood that this meant only Brown and meant only that they should put into form Sherman's side of his controversy with the Auditor. The committee accordingly performed what was required of them and reported to the Governor that the public safety and public good required the suspension of the Auditor. They reported no facts in addition to those already recited in regard to the money received by the clerks in the office for matters outside of their official duties, save and except fees paid by certain banks for bank examinations under the law, for which no fee was provided by law, and which they advised the Governor that the Attorney General claimed did not belong to the state treasury, but were illegally charged and paid. They also informed the Governor that in the year of 1883, the correspondence notifying the Auditor of the requirements of the insurance companies in regard to the appointment of agents had been destroyed. As all of these appointments were matters of record and the fees for their issuing were also regularly entered upon the books of the Auditor, this was one of the extraordinary finds of this extraordinary committee. They also advised the Governor in this report that the law required the reports of fees should be sworn to, and their interpretation of the law was that the Auditor himself should have made the affidavit, and instead thereof it was made by a clerk in the office.

Upon this remarkable report of this remarkable commission Sherman at once made an order, not suspending but removing Mr. Brown from office, and appointing J. W. Cattell, formerly Auditor of State, to take his place. Mr. Cattell was in no very great haste to do this, but after the order was

served by the sheriff upon Mr. Brown he very wisely entered into a negotiation with Brown to see if the difficulty could not in some way be adjusted, and have Brown make such reports to the Governor as would be satisfactory. Mr. Cattell was an honorable and honest man, and really desired that these matters should be satisfactorily arranged, but this was not the purpose of the Governor as manifested by his conduct, and he determined to have his own way. He accordingly filed information before a justice of the peace accusing Brown of a misdemeanor in holding the office after his order of suspension or removal, and upon this affidavit he obtained a warrant for the arrest of Mr. Brown. The constable served the warrant upon Brown, and Mr. Brown was about to give bond for his appearance to answer the charge, when the Governor, having previously ordered and arranged with the Adjutant General so to do, appeared with an armed force of the Governor's Guards, so-called, who, with set bayonets and loaded muskets took charge of the Auditor's office. Hearing that something of an extraordinary nature was transpiring at the capitol, I left my office and went over to the state house to see what could be done for my client, and was proceeding to the Auditor's office when I was stopped by two of the soldiers crossing bayonets in front of me, one of them cocking his rifle and threatening to shoot me if I proceeded any further. Fortunately the captain commanding the squad had a little sense left and told the soldier to put up his gun, and so my life was saved. The Governor in addition to the use of the militia as above recited, also employed ex-Governor William M. Stone to assist Mr. Galusha Parsons, and they filed a petition in the name of Jonathan W. Cattell against John L. Brown in the district court of Polk county under the provision of the statute for proceedings in "quo warranto" by which the right and title to an office could be tested. We were fortunate in having for district judge at that time William Connor, a good lawyer and an honest man. Mr. Parsons and Governor Stone attempted upon the presentation of their petition to get some

peremptory order for the removal of Mr. Brown from office, but the court called their attention to the express provision of the statute that he had no authority to make any order in the premises until the final trial, and that the case must go upon the docket and be tried upon its merits before any order or removal could be made. Upon the impeachment trial Sherman under oath denied that he had employed counsel to commence this suit, and Mr. Cattell testified that he had nothing to do with the employment of any counsel to bring the suit. The suit was finally dismissed, nobody appearing to care about any investigation of the merits of the proceeding. We accordingly had Mr. Brown, who had given bail, surrender himself to his bondsmen, and we applied to the supreme court of the state, then sitting at Davenport, for a writ of habeas corpus to test the constitutionality of the statute under which, without trial and without investigation and without hearing, the Governor had attempted to deprive Mr. Brown of his office. The supreme court decided this case at the Dubuque term in 1885, Seevers, judge, delivering a dissenting opinion, and Beck, judge, taking no part in the decision as he was not present at the submission of the cause. Adams, judge, delivered the opinion of the three remaining judges; to-wit, himself, Rothrock, and Reed. The majority of the court held that the law under which the Governor acted did not authorize any removal from office, and that it was only constitutional upon the hypothesis that Brown should have a hearing and trial. The dissenting opinion of Judge Seevers holds that as the law made no provision for any hearing or trial, and the suspension was for an indefinite time and might at the pleasure of the Governor be perpetual, it was therefore void and did not authorize the proceedings. Thus matters stood until the fall of the year 1885, when the people elected William Larrabee as Governor instead of Sherman, whose term of office would expire on the first of January ensuing.

The presumption indulged in by the majority of the court in its opinion that Mr. Brown's removal from office was only

a temporary suspension, and that the Governor certainly would give him a hearing as to the matters complained of and found by the special commision, is made to appear more absurd by the subsequent action of Mr. Sherman himself, who, on the 9th of December, 1885, made the following entry in the executive journal, and assumed to appoint J. W. Cattell to fill what he was pleased to call a vacancy in the office of the Auditor of State. The entry is as follows:

DECEMBER, 9, 1885.

Whereas, at the general election held on the 4th day of November, 1884, J. L. Brown was re-elected to the office of Auditor of State; and

Whereas, the said J. L. Brown, re-elected as aforesaid, neglected and refused to qualify as such re-elected officer, and because thereof his official bond as such officer was not approved nor filed, and continued in such refusal until the 3rd day of March, 1885, and unto this time, and on account thereof on the day last aforesaid Jonathan W. Cattell was duly appointed as Auditor of State and immediately qualified by giving bond and taking the oath of office as required by law, which said bond was duly approved according to law; and

Whereas, at the general election held on the 3rd day of November, 1885, there was no person elected to the said office of Auditor of State, as ascertained by the official canvass this day concluded by the state board of canvassers; and

Whereas, it is incumbent upon me to fill the vacancy in said office now held under appointment; therefore

Jonathan W. Cattell is hereby appointed Auditor of State, to have and to hold the same until the next general election in November, 1886; and upon his qualifying thereto by giving bond and taking the oath of office, as required by law, he will be obeyed and respected accordingly. BUREN R. SHERMAN

A legislature was elected that fall, and as the only opportunity for a hearing and a vindication of Mr. Brown, he sent a communication to the house of representatives requesting an investigation and an impeachment, to the end that he might have a trial before the senate.

The insurance agents of the state who had been wounded by the investigation of their affairs, Sherman and his political

adherents filled the lobbies of the legislature, and were anxious also for Brown's impeachment. Finally the house of representatives brought in articles of impeachment, containing thirty counts, and the senate ordered Mr. Brown arrested and brought before them for trial. As I had been Mr. Brown's counsel throughout all of these difficulties, he came to me for aid and wished me to act as his counsel. In the meantime he had received a number of letters from "Tom, Dick, and Harry" throughout the state, lawyers who wished to do some cheap advertising of themselves, offering to attend to his case without compensation. I told Mr. Brown that I would undertake his case on condition that I might select my own assistants. I realized that the court, to-wit, the fifty senators then entitled to seats in the senate, was of rather peculiar construction. We had in the first place a large majority of republicans, but we also had a number of very able and influential democrats in the senate. We had some Germans and some opposed to prohibition. It was necessary, in selecting attorneys, to consult the peculiar constitution of the senate and its make-up, and political partialities and proclivities. Mr. Brown agreed to my terms and I named Mr. J. C. Bills, of Davenport, and Mr. Fred W. Lehmann, of Des Moines, as the attorneys I desired to assist me in his defense. Mr. Lehmann was an excellent lawyer and a rising young man, very popular at that time with the democrats of the state. Mr. Bills was then nominally a republican, but had opposed the prohibitory law and stood well with that political element, besides being a good lawyer.

Acting upon my theory as to first impression, I made an opening statement to the senate giving them a very careful and detailed history of the case, and of the facts that we expected to prove upon the several counts of the indictment or impeachment. In addition to these two counsel we also had the assistance of E. S. Huston, of Burlington, a relative of S. F. Stewart, the deputy auditor. Mr. Huston especially looked after and cared for the interests of the deputy during the trial.

The managers upon the part of the house of representatives were Messrs. S. M. Weaver, John H. Keatley, L. A. Riley, G. W. Ball, J. E. Craig, R. G. Cousins, E. C. Roach. The trial continued about three months. I found I had made no mistake in selecting my assistant attorneys. We had a room set apart for us in the capitol, where we were in counsel arranging the program for the day's work before the senate, and assigning to each attorney his particular share of the work of the day. I always dreaded in coöperating with attorneys in the trial of causes, having some one to assist me who would be an annoyance and a drawback rather than a help, but I found in Mr. Lehmann and Mr. Bills two good lawyers and men of good judgment and discretion, and we had a most agreeable as well as a successful time of it on our side of the trial table.

The trial had not progressed more than a few weeks before we were able to turn the tide of feeling and sentiment in our favor, or rather in favor of our client, and the case, instead of being a prosecution of John L. Brown, actually became an exposure of the petty tyranny and foolishness of Buren R. Sherman, and the managers on the part of the house were forced into the position of recognizing Sherman as their client and recognizing the necessity of defending his conduct rather than of convicting Mr. Brown of any serious offense against the law.

It also was apparent before we had proceeded very far in the case that the managers of the prosecution did not entirely agree from time to time between themselves as to the part that each should take in the proceedings. Some of the men had evidently hoped to make a great reputation for themselves as lawyers, and were being disappointed in the result as to that particular.

We had one serious hindrance and drawback in our case. F. S. Stewart, the deputy auditor, proved a very heavy load to carry. He had many winning ways by which he made no friends, and his conduct proved him to be a greedy, grasping man, and if the impeachment had been against him instead of

Mr. Brown we should have found "Jordan a hard road to travel." In addition to his regular salary he had drawn a very considerable sum of money for extra pay and compensation for work he had done in the Auditor's office, as he claimed, out of regular hours. He had also collected as bank examiner from the various banks he examined a considerable amount of fees for which there was no provision or warrant of law, and had taken the money to his own use. The only serious charge against Mr. Brown and the only one from which we apprehended any danger, grew out of the examination of the Bremer County Bank, situated in Waverly, Bremer county, Iowa. That bank had for its rival another bank in the locality, that probably would have profited by having it go out of business, and they were entirely disappointed and dissatisfied because the examination of the bank by Mr. Brown in person and by an assistant proved the bank to be a solvent concern. After the examination of the bank and after Mr. Brown had given in for publication a certificate of their solvency, and without any previous request for compensation or suggestion of payment from any source, the cashier of the bank had paid to Mr. Brown voluntarily the sum of one hundred dollars as compensation for his extra services and expenses during the investigation of the affairs of the bank.

The charge in the articles of impeachment was that this was a bribe to Mr. Brown that had induced him to certify fraudulently and falsely to the solvency of the bank. We proved beyond controversy that the bank was solvent and continued to be so for several years after the investigation, and that the certificate of solvency given to it was just and right and proper, and there was no foundation for the charge that it was given from any corrupt motive. This matter of the Bremer County Bank did not constitute any part of the original trouble or accusation against Brown by the Governor, but it was trumped up by Brown's enemies and was soon gathered in by the Governor's "muck-rake."

After all the evidence had been put in, both upon the part

of the prosecution and the defense, there remained one important question for us to decide—as to whether or not we would put Mr. Brown upon the stand as a witness in his own case. The only thing we had to fear from our client as a witness was his sensitiveness and pride and his determination to resent any insult or imputation against his honesty and integrity in office. We knew he had some enemies in the senate who were at the same time his judges and were to vote upon the question of his guilt, and these senators had the right to ask him any questions upon cross-examination they might see proper. It would not do for his counsel to object to the relevancy or propriety of any questions that might be asked, as it might appear if we did so that we had something to hide or from which to shield our client. We had a long conference with Mr. Brown before we decided what course to pursue upon this question of making him a witness. He continued to vow to us that he would not consent to submit to any insulting interrogatories, no matter from whom they came, and that he would talk back if any such were propounded. I finally had a private conference with Mr. Brown and urged upon him the absolute necessity that if he went upon the stand as a witness, of being perfectly cool and dispassionate and not manifesting any passion or resentment toward any of the senators who might question him. After a long conference upon this point, he finally promised me that he would do his best to suppress his indignation and his feelings, and would quietly answer any questions that might be asked him. The next day we put Mr. Brown upon the stand as a witness, and to his credit it may be said that he behaved himself most admirably, and won the respect and esteem of the senate by his dignified and courteous behavior.

The constitution of the state required, in order to convict the defendant, a vote of guilty by two-thirds of the members of the senate. Instead of this the highest vote against the defendant upon any article was fifteen votes, or less than one-third, and upon the first, second, third, fourth, and fifth

articles that embraced the original controversy with Governor Sherman, upon which he refused to approve the Auditor's bond and appointed his subservient commission, there was not a single vote of guilty against the Auditor, but he was unanimously acquitted. Upon several of the articles it appears that some of the senators voted "guilty" upon a very slim and unwarranted basis. For instance one of the articles of impeachment was against the Auditor for drawing a warrant in behalf of his clerk for the month's salary, the warrant specifying the particular section and chapter of the law that made an appropriation for the purpose of paying this clerk. The fact of the service being within the personal knowledge of the Auditor, and the receipt of the clerk being upon the stub of the warrant issued, and yet the managers insisted that there ought to have been a paper filed stating the account as between the clerk and the Auditor, and because it was not drawn out and filed among the papers of the office, six of the senators voted to find him guilty and to impeach him. It was a mere technicality, extremely, finely drawn out, and showed a disposition to try and ruin a man and his reputation without conscience or any regard to their duty as men and their oath as senators. The vote of fifteen upon the Bremer County Bank question against the Auditor may be justified upon the theory that a public officer situated as the Auditor was, having an important duty to perform, should not accept of any gift or favor or money that might be construed as something he had hoped for or expected when he performed his official duty. The act of receiving the money under the circumstances, though not criminal, was one of those acts of doubtful propriety that could scarcely be justified in a public officer.

The acquittal of Mr. Brown was beyond question a righteous and just act. Governor Larrabee, the newly elected Governor, had already restored Mr. Brown to his office and discharged the appointee to fill the created vacancy, and the people of the state retired Mr. Sherman from public employment permanently. After retiring from office he engaged in

managing an insurance company at his former place of residence in the state, in which he was unsuccessful.

The state of Iowa paid to the attorneys in the case selected by Mr. Brown the sum of six dollars a day. I charged Mr. Brown, however, one thousand dollars for my entire services in connection with his impeachment, and he gave me his note for the balance, deducting the amount I had received from the state. This note was signed by S. F. Stewart. Some months afterwards I received from Stewart's wife a very remarkable letter, full of tears and sympathy for Brown, begging me to remit the amount on the note as Mr. Brown was poor and had been much wronged and abused. I ascertained that Stewart at or about the time he signed the note, had obtained from Mr. Brown a transfer to some valuable stock in the *Iowa Homestead* newspaper at much less than the real value of the stock, and that they had counted the amount due me on this note as part of the consideration of the transfer. Estimating Mrs. Stewart's sympathy for Mr. Brown at its true value, I insisted on my note being paid in full, which Mr. Brown cheerfully did.

Mr. Brown was further vindicated by the subsequent action of the general assembly of the state in making a reasonable appropriation to reimburse him for his expenses and attorney's fees paid out in making his defense against the articles of impeachment. The result of the investigation before the senate also had a very beneficial effect upon the home insurance companies in that it gave public confidence as to their solvency, and gave assurance that the proper department of state would make the investigation of their transactions from time to time thorough and real, and not as before merely nominal.

CHAPTER XV

More Law Cases

In the summer of 1874 the city of Des Moines was thrown into a state of considerable excitement by the fact of finding the body of a murdered man on the sidewalk near the corner of Walnut and Second street. There was a house of bad repute in the vicinity, and the coroner's jury made a thorough investigation, seemingly as far as practicable, as to the cause and origin of the death. The inhabitants of the house referred to were examined under oath, and the women who boarded there denied any knowledge whatever of the cause of the man's death. The Governor of the state offered a reward of five hundred dollars for the discovery and conviction of the murderer. At the next session of the grand jury of Polk county two of the women boarders at the house of bad repute referred to, and who had denied all knowledge of the murder, appeared before the grand jury and testified with much detail that Charles Howard, a man who had frequented their house, had been guilty of the murder and had carried out the dead body and laid it upon the sidewalk. The grand jury indicted Howard accordingly for murder in the first degree. The trial came on at the December term of the Polk county district court, and in view of the public excitement, which was largely kept alive by the daily press, Howard, by his attorney, made a motion for a change of venue on the ground of prejudice of the inhabitants of the county. Under the peculiar provisions of our statute, counter affidavits were permitted for the purpose of showing that there was no feeling in the community that would prevent Howard from receiving a fair trial. The sheriff informed me that in walking two squares from the court house he had met two hundred

men who were willing to sign such counter affidavits, and had obtained a large number of them, which were filed accordingly. The district judge, H. W. Maxwell, overruled the motion for a change of venue, and the trial proceeded. The only testimony introduced in the conviction of Howard was that of the two bad women who had testified before the coroner's jury that they had no knowledge whatever in regard to the killing of Johnson. I was not personally engaged in any way as an attorney in this case, but about ten o'clock at night after the jury had retired to consider their verdict, Judge Maxwell sent for me to come to the court house for consultation. I found he had also sent for a like purpose for Mr. D. O. Finch, one of the oldest members of the Polk county bar. The judge advised us that the jury had not agreed upon their verdict, but that some one had through the bailiff sent a note in to the jury room threatening the jury with violence in case they failed to convict the defendant. Judge Maxwell was much excited and asked Mr. Finch and myself what he ought to do under the circumstances. We advised him by all means to have the defendant conveyed for safe keeping to some place outside of the county, in charge of the sheriff, and to have it done secretly and immediately lest the mob might seize the accused and commit violence. We also advised him to discharge the jury from a further consideration of the case, as their verdict found under the influence of threats would be worthless, and that he ought also in vindication of his own court to thoroughly investigate the question as to who was guilty in sending or permitting a threat to be communicated to the jury. Instead of being influenced by our advice Judge Maxwell had the jury brought into the courtroom for further instructions, and told them that great excitement and feeling prevailed in the community in regard to the case, and that it was important that the jury should not disagree but should find a verdict in the case. The next morning the jury brought in a verdict of guilty, and the defendant waiving time for sentence, Judge Maxwell had the prisoner brought into court. The courtroom

was crowded by an excited mob, and the judge took occasion to harangue the prisoner, denouncing his conduct in the most vehement manner. He then sentenced the prisoner to imprisonment in the penitentiary for life. That night the excited mob broke open the jail, took the prisoner from his cell with a rope tied around his neck, and hung him to a lamp post in the court house square. The opinion of most of the persons who paid any attention to this trial was that there was no reliable evidence of Howard's guilt, and that the probabilities were that the whole case was manufactured for the purpose of securing the reward offered for his conviction. Whether or not the reward was ever paid I have not been able to ascertain, but certain it is that the cowardice of the court and the indiscretion of the public press were responsible for the murder of a man who, to say the least of it, was never proved guilty by any competent evidence.

We had among the distinguished judges that acted as teachers in our law school at Transylvania University a very eminent jurist who sometimes when he felt merry treated the class to that which was not only instructive but also entertaining. On one occasion he delivered to the class the following:

Young Gentlemen: You will find that the general principles of the law are few and easily comprehended, but in their application to the ever-varying transactions of human life the best of minds will differ, hence arises what we denominate the glorious uncertainties of the law whereby we have our bread.

The case that I am about to cite would satisfy the most credulous that there are other causes that produce uncertain results besides the difference in applying the general principles of the law to different cases.

Section 3, article XI of the constitution of the state of Iowa, provided as follows: "No county or other political or municipal corporation shall be allowed to become indebted in any manner or for any purpose to an amount in the aggregate exceeding five per centum on the value of the taxable property within such county or corporation, to be ascertained by the

last state or county tax list previous to the incurring of such indebtedness.'' In November, 1870, the taxable property, real and personal, within and subject to taxation by the said city of Des Moines, as ascertained by the last state and county tax list, amounted to the sum of $3,140,805 and no more, and that five per centum on said amount was only the sum of $157,040-.25. In the month of May, 1869, the city had by ordinance authorized the issuing of bonds to the amount of $50,000 for the purpose of funding outstanding warrants, and afterwards in May, 1870, they had enacted a further ordinance authorizing the issuing of bonds for funding outstanding warrants on the city treasurer to the amount of $75,000, all of which bonds had been duly issued and were outstanding at the time of the commencement of the suit hereinafter mentioned. In addition to these bonds aggregating $125,000 there were also outstanding warrants upon the treasury to the amount of $55,000, making an aggregate indebtedness of the city $180,000. On the 7th of July, 1870, the city passed a further ordinance authorizing the issuing of bonds to the amount of $130,000 for the building and repair of certain bridges across the Des Moines and Raccoon rivers, thus exceeding the constitutional limit upon the city's indebtedness.

George Sneer, a citizen and taxpayer of the city of Des Moines, applied to me to bring a suit to test the validity of this last bond issue of $130,000, informing me that the bonds had been placed in the hands of B. F. Allen, then a banker of the city of Des Moines. I informed him I was willing to take the case provided that the suit should be maintained in good faith, that I was satisfied that the bonds were absolutely void whether in the hands of Allen or any other person, being issued in plain violation of the constitution of the state, and that every person purchasing any evidence of indebtedness against the city was bound to take notice of the existing indebtedness of the city and was charged with knowledge thereof, as it was a matter of record and easily ascertained. Mr. Sneer informed me that he desired the question of the validity of the

bonds tested in good faith, and that if I undertook the case I might prosecute it to the end. He contracted to pay me the sum of two hundred dollars for my services, and I accordingly prepared the bill for a perpetual injunction against the city council, city treasurer, and B. F. Allen. No one was made defendant to the petition except Allen and members of the city council and the city treasurer. Answers were filed by Mr. Withrow for B. F. Allen and by Seward Smith, his partner, for the city of Des Moines and members of the city council, and the case was submitted on bill and answer. There was no denial of the facts set forth in the petition in regard to the indebtedness of the city, nor did anyone appear in the case claiming to be bona fide purchasers of the bonds, but the answer of Allen was to the effect that he acted as agent for the city and had sold the bonds to one George P. Opdike & Co. of New York City. Maxwell was judge of the district court, and to my surprise entered the following decree in the case:

This cause coming on for final hearing on the plaitiff's petition, and answer made thereto, and the defendant's answer and cross petition, and thus heard upon the pleadings alone, and the court having heard the argument of counsel, inspected the said record and being fully advised in the premises, doth order, adjudge and decree, that the plaintiff's bill be dismissed; that the bridge bonds described therein be treated as in every respect binding obligations of the city of Des Moines according to the tenor thereof, and that the parties thereto and those in privity with them be forever concluded from asserting or maintaining any defense against the payment of said bonds, and the interest thereon, on the grounds that the same were irregularly issued in excess of the constitutional limitation upon the power of the said city to become indebted; that the money now in possession of the defendent Allen, be applied by the proper officers of the city of Des Moines to the purposes for which the same was raised; and that the defendant have and recover the costs herein taxed at———— dollars, and that execution issue therefor. To which plaintiff excepts.

Upon the rendition of this decree I immediately entered an appeal in behalf of George Sneer, and perfected the same

by filing the proper abstract of record in the supreme court of the state. The cause was submitted to the supreme court on printed arguments on April 4, 1871. At the October term of the supreme court, being an argument term held at Davenport at that date, the supreme court really decided the case by an opinion written by Judge Beck in behalf of a majority of the court, and the opinion was sent by Justice Day to the clerk about the time the court was to adjourn, with orders to file the same, and Mr. Charles Linderman, the clerk of the court, informed me that he had actually marked the opinion "Filed," and that about the time that the filing was completed Judge C. C. Cole, then one of the judges of the supreme court, entered the clerk's office and filed with him a paper signed by George Sneer dismissing his appeal, and that he entered upon the records of the court the following entry: "On application of appellant, it is ordered by the court that the appeal herein be, and the same is hereby dismissed."

At the ensuing regular term of the supreme court held at Des Moines, December 5, 1871, the following entry was made in the case: "At the argument term held at Davenport in October last, on application of George Sneer per se, appellant herein, the court ordered that the appeal be dismissed." Before this dismissal either at Davenport or at Des Moines Sneer had settled with me and paid me the fee agreed upon, and I had nothing further to do with the case except to reproach him for violating his agreement with me that I should prosecute the case to a final result.

It appeared from the sequel that Judge Cole had also prepared a dissenting opinion in the case, and these two opinions, that written by Judge Beck as the opinion of the court, and the one written by himself were both published in the *Western Jurist* the ensuing January, the one marked "B" and the other marked "C," but suppressing the fact that the opinion marked "B" was the opinion of a majority of the court, and that none of the judges, except Judge Cole, agreed with the opinion marked "C;" and having the following extraordinary

note printed in connection with the opinions, Judge Cole being then the editor of the *Western Jurist*: "These two articles, this and the following which advocates a different view of the same question, are from members of the profession in Iowa occupying equal prominence before the public, and whose opinions are entitled to consideration." Whilst these opinions do not give the detail of the case that was submitted to the court and to which they relate, yet by carefully reading them you can easily see that they refer to an actual controversy that had been pending before the supreme court. The supreme court of Iowa subsequently decided the question that was involved in the case of Sneer vs. the City of Des Moines, establishing the principle as applied to this transaction to the effect that the bonds were absolutely void in the hands even of an innocent purchaser if such had been the case. See

McPherson vs. Foster, 43 Iowa, page 48.

Mosher vs. Independent School Dist., 44 Iowa, page 122.

French vs. Burlington, 42 Iowa, page 614.

Andrews vs. Orient Fire Ins. Co., 88 Iowa, page 579.

Holliday vs. Hildebrandt, 66 Northwestern Reporter, page 89.

The dismissal of the appeal by Sneer left the decree entered by Judge Maxwell in full force as though no appeal had ever been taken, and the parties procuring this result, after they had full knowledge of the fact that the majority of the judges of the supreme court held the bonds void, are fully entitled to all of the credit that their conduct merits, and I only record the matter here as a matter of history and as vindication of myself and to exonerate myself from any responsibility for the final result, as I had no knowledge of the dismissal of the appeal until long after the thing was done.

I have within the past few weeks examined the archives of the supreme court, and find that the original opinion of the court written by Judge Beck signed "B" and printed in the *Western Jurist* (see Vol. VI-1872) cannot be found, and also the paper signed by George Sneer dismissing the appeal is

missing from the files of the court. I presume the city council, as they had by their attorney asked to be enjoined from disputing the validity of these bonds, had obtained a decree against themselves to that effect, very willingly paid the bonds when they matured, but of this I have no actual knowledge.

CHAPTER XVI

Birth of a Son and Personal Incidents

Leaving the history of political and professional for the present, it will now be necessary to revert and give in some detail matters more personal and affecting more nearly my own private life. I have already given an account of my marriage and removal to Des Moines.

On the 18th of February, 1863, my wife and myself were made happy by the birth of our only child. This hope deferred came after ten years of waiting. Whilst the child was still an infant I was compelled to be absent on professional business at Indianola in Warren county. I concluded my business as soon as possible and hurried home, feeling an unpleasant premonition that everything was not all right with the mother and the child. Heavy rains had swollen the streams between Indianola and Des Moines, and as I approached the small bridge crossing the creek about four miles south of Des Moines, I found the water running several feet deep over the floor of the bridge. I knew this made the passage very dangerous because frequently such floods took away the flooring and made it probable that the horse and buggy in which I was riding might be cast into the flood of the stream. After some hesitation, however, I determined to take the risk and plunged into the stream accordingly. I got safely over and was much relieved when I found myself again on solid ground. I got home a little after dark and found an old lady who had been employed as nurse to the little one, who was squalling violently, engaged in trotting the infant upon her knee, as my wife lay on the bed on the very verge of hysterics. The next morning early I put out to find a nurse woman possessed of more flesh and patience, and the domestic trouble subsided. The

first six months after the arrival of the little stranger my wife could scarcely obtain an hour's consecutive rest. The normal condition of the child appeared to be colicky. As I had to be engaged throughout the day in my business we finally established a second bedroom and I divided the time at night as well as I could with my wife, taking my turn at walking the floor at "half dress." The child, however, proved a great comfort to us and a pleasure, though for many months it was the pursuit of pleasure under difficulties.

At the approach of the following year we were surprised by a visit from the wife of Mr. Charles McMeekin, my wife's brother, who then resided at Cincinnati, Ohio. His wife brought with her two children, a boy and a girl, she herself being something of an invalid. It was very difficult at that time, as it has been ever since, to obtain competent domestic help, and after entertaining this lady and her two children for several months I found it necessary to notify my brother-in-law that situated as I was it was no longer convenient for me to entertain his family, and they accordingly left us and went to live at a boarding house kept by Mrs. Washburn on Fourth street. The next summer, at the request of my wife, I consented to take one of the sons of her sister Eliza, and I furnished the means for his transportation from Newport, Kentucky, to Des Moines. I tried to give this boy instructions in reading, writing, and arithmetic, but found him not inclined to study, and especially disinclined to afford any help or assistance about the house. He had been raised under the shadow of a peculiar institution and had imbibed a strong prejudice against anything like work. After worrying with him for three or four months and being unable to make anything out of him, I sent him home to his mother.

In 1849 I purchased two lots on the northeast corner of Center and Fifth streets and removed my old buildings from my place on Fourth street to the lots so purchased, making some improvements on the buildings. These lots and build-

ings I afterwards sold and built a new house on the old place on Fourth street.

In the fall of 1877, whilst on a visit to Ohio, my half-brother, Charles R. Nourse, invited me to a private interview in which he disclosed the fact to me that he was engaged to be married and wanted me to do something to help him start in life in some kind of business. The young man had not improved his opportunities for an education and had spent several winters doing farm work. Before I had left home on that occasion Sylvanus Edinburn had proposed to exchange a small farm that he had in the suburbs of the city, of eighty-eight acres, for some property I had acquired in town. It occurred to me that I might help the boy by making the trade for this farm, and I accordingly told him if he would have his mother send an invitation to his intended to come and take dinner with us, and I liked the looks of the proposed wife I would do something for him. He readily consented to this arrangement, as did also his intended, and as she appeared to be an industrious and bright young woman I came home and completed the purchase of the farm which I obtained a deed for in March, 1878. There was no building on the farm fit to live in. I had the old house moved onto the barn-lot and fixed up for a granary, and built a new house at the expense of about fifteen hundred dollars. In the following spring Charles R. with his bride put in an appearance and I settled them in their new home, where they lived happily for a number of years, but finally after about fifteen years that most fatal of all curses, strong drink, got possession of the young man and he went to the bad.

In the year of 1875 while visiting my sister at Tuscola, Illinois, I found her in possession of a very large and increasing family. I was especially pleased with her second daughter, Rose, then a young lady about twenty years of age, and suggested to my sister that if she would consent I would take Rose home with me and help her to an education. Accordingly in 1876 Rose came to Des Moines and made her home with us.

My oldest brother, Joseph G. Nourse, had died at Cincinnati, Ohio, in March, 1863, and about the year of 1876 I had induced his widow with her three boys to remove to Des Moines, her oldest daughter Susan having previously married to Mr. J. A. Jackson. I had before that time induced Mr. Jackson and his wife also to remove to Des Moines and had given Mr. Jackson employment in my office as an assistant. I had also built on Fourth street a one story cottage of three rooms and a kitchen, which they occupied for a year or two.

After my niece, Rose Vimont, had been with us for probably a year I became satisfied that she had not succeeded in winning the affections of my wife. Dr. C. R. Pomeroy had been our pastor at the Centenary Methodist church for several years and had removed to Emporia, Kansas, and taken charge of the State Normal School at that place. As Rose desired to prepare herself for a teacher I went with her to Emporia in the spring of 1877 and placed her at the institution under the care of Dr. Pomeroy and his wife, where she remained for twelve months, when school was suspended by reason of a fire which destroyed the buildings. Rose returned to Des Moines and the following year, 1878, she taught a small school in the brick schoolhouse on the northwest corner of my farm, and had a room and boarded with my half brother, Charles R. Afterwards she obtained a situation in the public schools of the city of Des Moines and became a very successful teacher, remaining in the city some fifteen years or more.

Soon after the purchase of my farm, in order further to promote the interests of my brother and give him employment, I became interested in the purchase and raising of pure bred short-horn cattle, committing to my brother the immediate supervision and care of them on the farm, and building some extensive barns and other out-buildings. I subsequently bought from George Sneer 126 acres of valuable land in section 20, township 79, range 24, and afterwards in July, 1879, bought thirty-seven acres adjoining the tract that I had purchased of Edinburn, making a part of the home farm. I also bought

adjoining the same original tract eleven acres from a man by the name of Parks.

Subsequently I contracted with a man by the name of Miller to put down a bore hole on my land near the barns, with the hope of procuring artesian water for my cattle and a flowing well. In this I was disappointed, but I required the man to keep an accurate journal of the different strata through which he bored, and at the distance of about 140 feet below the surface he went through a valuable strata of coal averaging from four and one-half to six feet in thickness. I subsequently leased the right to take coal from these lands to the Keystone Coal Company, under which lease they sunk a shaft and operated a mine on the home place for about thirteen years. The royalty from the coal during these thirteen years more than paid the original purchase price of this land, which cost me originally only about fifty dollars per acre.

About the year 1878 I received a letter from my old friend, Amos Harris, formerly a resident of Centerville, Iowa, then living at Wichita, Kansas, informing me of the death of a man by the name of Loring, who had been a former client of mine, residing at Indianola, Iowa. He stated that Mr. Loring had left a widow and some five little children, all girls, the youngest an infant only a few months old, and that the family was left in a destitute condition; that upon questioning Mrs. Loring she had told him that I had transacted some business as attorney for herself and husband, and had sold a house and lot in Indianola that they had deeded to me, with a promise upon my part that after paying certain debts for the collection of which I was attorney, if there was anything left they should have it. I had realized about one hundred dollars over and above the amount paid out and I immediately sent Mrs. Loring fifty dollars for the relief of her immediate necessities, and afterwards paid her the balance. Some four or five years after this Mrs. Loring came to Des Moines, bringing with her this young child then about four or five years of age, stating that she had a short time before that married a man by the name of Gregory,

that he was a man of considerable means but refused to support her first husband's children, that she wished to make some arrangement to have this young child cared for, that she had already disposed of her older girls among her relatives. I introduced her to Mrs. Winkley, then a resident of Des Moines, who kept a school for small children and boarded and cared for them, a lady to whom my son had been going to school and who was held in high estimation by her many friends. Mrs. Gregory, as she then was, arranged with Mrs. Winkley to leave her youngest child with her to be cared for, and left with me some money to pay Mrs. Winkley from time to time, and also any other expenses that might be incurred in the care of the child. Mrs. Winkley lived on Third street within a block or two of our residence, and I frequently had this child visit our home. My wife seemed to be interested in the child and became attached to her, as I did also myself. Along about the first of February, 1882, Mrs. Gregory came into my office in Des Moines, stating that she had come to take her child Susie, as she could no longer afford to bear the expense of her keeping with Mrs. Winkley. I asked her if that was the only objection to the child remaining where it was, and she said yes, she was very well satisfied but she was then separated from her husband and was not able to pay the expense incident to the child's keeping in her present situation. I asked her if she had any home to which she could take the child, and she said no, that she had employment at some sanitary institution but it really was not a home for the little one. Upon the impulse of the moment and without any very considerable thought upon the subject and having no consultation with my wife, I told Mrs. Gregory to leave the child where it was and I would bear the expense of caring for her. My income from my practice at that time was averaging about $10,000 a year and I saw nothing very serious about this undertaking, but upon reporting it to my wife she expressed herself very much dissatisfied. Upon further reflection I feared that after the child became older the mother might claim its cus-

tody, and for my own protection I wrote out articles of adoption and sent it to the mother, which she duly executed and returned it to me, surrendering to me the full care, custody and control of the child, which articles were duly recorded in Polk county, Iowa, on the 8th of February, 1882. After remaining for several years with Mrs. Winkley I sent this child to Chicago to the school of Miss Rebecca Rice, where she remained for a number of years and received a very satisfactory education. The enterprise, however, of caring for and educating this child was not a success. My wife imbibed a strong prejudice against her and never received her as a member of the family. When she was about seventeen years of age she became dissatisfied and I sent her to her mother, who was then living in California. She did not remain with her mother, but afterwards came back to me and by her own wish and desire I arranged to have her taught telegraphy by the superintendent of city telegraphs at Chicago. In the meantime I ascertained that while she was in California she had engaged herself to be married to a man by the name of Guldager. I tried to dissuade her from this early and inconsiderate engagement but she had not learned the lesson of obedience and was not easily controlled by good advice or counsel. Her California lover furnished her the means and she left without my knowledge or consent and went to California to him when she was about eighteen years of age, and was married.

After the dissolution of my partnership with Williamson & St. John in 1865, I continued the practice of law without any partner in business, receiving assistance from time to time from young men who were studying law in the office or who were beginners in the profession. None of these, however, proved entirely satisfactory.

About the year 1870 Benjamin F. Kauffman, then a young man recently graduated in the law department of the State University, came to me desiring a situation in my office. I had been so disappointed in the young men who had preceded him

that I hesitated about making any further engagement in that direction. Judge George G. Wright, however, who had been one of Mr. Kauffman's preceptors at the law school, warmly recommended him and urged me to give him a position in the office. He was entirely without means and I offered finally to pay his board for six months and take him upon trial. He asked me what he could expect after the expiration of the six months. I told him that after six months if I found that I could get along without him I should discontinue the arrangement. He replied that that was a very hard proposition. I told him no, that he was a young man in good health, full of energy, and if he could not make himself a necessity to my business in six months there was no reason why I should continue even to pay his board. He said if he accepted my proposition, what would I do for him at the end of the six months. I told him that if he made himself a necessity to my business so that I could not get along without him, he would then be master of the situation and I thought there would be no trouble about arranging terms that would be entirely satisfactory to him. He came into the office accordingly and applied himself diligently to business. I occasionally stated to him some question involved in cases I had pending and desired him to examine the authorities and make a brief upon the question involved. He proved to be of very material assistance, very industrious, with a clear mind capable of understanding and analyzing and applying the cases he found in the books bearing upon the question under investigation. At the end of six months I arranged a partnership with him and he continued in that relation for seventeen years, with much profit pecuniarily both to himself and myself.

In the year of 1874 I exchanged a lot that I owned on Center street with Mrs. McCauley for property on Fifth street, taking the deed in the name of the firm of Nourse & Kauffman, upon which we built the subsequent year a two story brick building, occupying the south half of the first story for our law offices. We subsequently bought from Thomas Boyd the

forty-four feet on the east end of this purchase, giving us the entire forty-four south feet of lot 2, block 22, of the original town, and in the year 1886 we built a four story brick building covering the entire surface of the lot.

On the dissolution of my partnership with Mr. Kauffman I formed a partnership with my nephew, Clinton L. Nourse, and we removed into the new building and occupied the front rooms of the second story. Mr. Kauffman in the meantime entered into partnership with one N. T. Guernsey and occupied rooms on the fourth floor of the building.

About the first of January, 1880, I received information that my father, who had removed to and was then residing at Reynoldsburg, Ohio, was very ill and not expected to live. I immediately went to Reynoldsburg. My father was still conscious and able to recognize me, but was very nearly approaching the end. My brother, John D., who resided then at Lancaster, Ohio, was in attendance upon my father but unable to arrest the disease. On the 3rd of January my father passed away. After his death in conference with my step-mother in regard to her future, I found she was disposed to join her sister, Mary Herron, in building a small house in West Rushville and making her home there. I was satisfied that this arrangement would not last. My step-mother was a self-sacrificing woman and I knew her sister's disposition was very exacting. It was also arranged that my half-sister Mary should live with them. When I bid my step-mother good-bye I told her that I had no confidence in the permanency of the arrangement she had made with her sister, but in view of her faithfulness to my father during his old age I wanted her to feel that she should have a home, and if the arrangement she had made to live with her sister did not prove satisfactory, not to hesitate about advising me of the fact, and I would provide her a home on the farm where her youngest boy Charles R., was then living. As I anticipated, after a few years I received information that mother and sister Mary both desired to come to Iowa and avail themselves of my

proffered help. They came accordingly and the first year resided with my half-brother Charles. Mother then had about twelve-hundred dollars of the small means left, and I proposed to borrow this money and build her a house which she should have rent free, and I would pay her interest on the twelve-hundred dollars which would enable her to live comfortably on the farm. I accordingly built the cottage for herself and her daughter Mary, which they continued to occupy for several years. In the meantime sister Mary taught a Sunday School class in the neighborhood, and among her scholars was one Chris Mathes. This rude uneducated boy, seventeen years younger than herself, pretended to fall in love with her and on the first of January, 1889, she became his wife. In March, 1896, my step-mother died, leaving what little means she had to her daughter Mary, and what was left of the money she had advanced to me for building the house she had occupied on the farm, which I afterwards paid over to Mary in full.

CHAPTER XVII

Breeder of Short Horn Cattle

My half-brother, Charles R., continued on the farm in my employment and in the care of my short-horn cattle business until the year 1889, when I sold out my entire herd. During the ten years I was in the business I enjoyed the recreation and attention to my stock, finding it a great relief from my nervous tension and anxiety incident to an extensive practice of the law. Soon after I commenced the business I attended a meeting of the short-horn breeders of the state at West Liberty, Iowa, at which time there was organized a Short-Horn Breeders' Association of the state of Iowa, and I was elected president of the association and continued in that office for seven years and until I retired from the business. In the meantime we had also organized a national association at Chicago for the purpose of purchasing the short-horn herd books published in New York, Ohio, and Kentucky, and establishing the *American Short-Horn Herd Book*, which became the only authentic publication of pedigrees of short-horn cattle in the United States. I was made a member of this board of control and continued in that relation for a number of years, until I declined a further election because of my retirement from the business. Our board of directors represented some eleven different states of the Union with one director from Canada. Our annual meetings were held at the time of the annual Fat Stock Show in Chicago, and the gentlemen with whom I was associated in that capacity were among the most pleasant acquaintances I ever made during my lifetime. I found them intelligent, broad-minded men, entirely unselfish and devoted to the interests of the Association. During my connection with the board we paid off the entire indebtedness

incurred in the purchase of the *Short-Horn Herd Book* as theretofore published by Mr. Allen of New York, and also the indebtedness incurred in the purchase of the *Kentucky Herd Book* and the *Ohio Herd Book*. Our state association also met once a year in connection with the Improved Stock Breeders' Association of the state. We generally wound up these sessions of our meetings with a banquet given us by the citizens of the place where we held our meetings. At these banquets we had a number of toasts and speeches, rather of the humorous than of the instructive kind. I give herewith a specimen that I find printed with the proceedings of the association held at Ottumwa on the 4th day of December, 1885.

The Short-horn and Improved Stock Breeders' associations of Iowa were intended in a great measure by their founders as missionary societies. It was contemplated that they would hold their conventions in the smaller towns and more sparsely settled portions of the state, where their discussions upon breeds and breeding would educate the farmers around in these great and important industries.

A feast like this in one of the thriving and finest cities of the state is hardly consistent with this benevolent and self-sacrificing purpose, and I have reason to fear for the consequences; we may fall from grace. At a recent session of the New York Annual Conference of the Methodist Episcopal church, it is said that the bishop had great difficulty in satisfying the preachers about their appointments. One of the elders gravely informed the bishop, that the preachers in his district had two ambitions; one was to get to heaven, and the other was to be stationed in the city of New York, and if they were to miss either, he thought they would prefer to go to New York!

Now I know many of these self-sacrificing gentlemen I see around me have in the past of their lives been trying to do good, looking for their reward largely in the next world; but I fear in the future, when we come to fix the place of our next annual meeting, they will forget the spirit of self-sacrifice and the world to come, and say, "Let us go to Ottumwa!" [Great laughter.]

I wish I could express to the citizens of Ottumwa the genuine appreciation that I know these my brethren feel for them. It could not be otherwise than that they should love you. You have appreciated us and we must ever appreciate you. Your example also may be

valuable to us; others may hear of your good works and may be thereby moved to be equally mindful of our necessities. [Applause.]

My first knowledge of Ottumwa was in the year 1851. It was then a straggling village of one street lined on either side with wooden shanties. It would have been impossible for me to have imagined then that in a few short years, whilst I am yet a young man [laughter], there should be built here a substantial city of fifteen thousand inhabitants. This goodly town is indeed a proud monument to the thrift, enterprise, intelligence, and taste of its inhabitants. Its commercial and manufacturing interests, and its tasteful architecture you may justly be proud of.

Iowa is indeed a remarkable state and her people a peculiar people. We have but few drones in the hive. Our population is made up of simply the young and the strong and the enterprising of the other states that have come hither to build up their personal fortunes, and who have at the same time laid well and strong the foundations of a great state. There is scarcely a college or university of any of the older states that is not well represented in our men and women. We have come together here and what one did not know he has learned from his next door neighbor. All have contributed something to the common fund of knowledge and enterprise. We have now built our own schoolhouses and colleges, and today we have a less per cent of illiteracy than any other state in the Union. But there is one burden on my heart and one thought I desire to express: What is the future to be? Are we giving to the state the children that may worthily fill our places and take up and carry forward the work that we have begun? The highest duty that we owe to the state is to furnish to it in our children that perfect type of manhood that will constitute its true glory. What signifies this accumulation of wealth, these fine buildings, this beautiful architecture, if our sons are to be profligates and the accursed saloon is to destroy all the fruit of our toil. The time has come when as citizens and as fathers we must seriously address ourselves to this problem of our civilization.

I came to Iowa more than thirty years ago. I formed many warm attachments among the young men, then just beginning life. I remember the pride and hope that these young men and their then young wives had in their children. As I visit the older towns where these men have lived and won honorable distinction I have inquired for their children. Alas! Too often it is a sad story and a painful

remembrance, and I have asked myself the question, is this always to be so? And is there no help?

But enough of this; I forget I was not appointed to preach a sermon, but to respond to a toast, and to express the appreciation of these stockbreeders for your kindness. You have done well. The scriptures exhort "that we should not be forgetful to entertain strangers for thereby some have entertained angels unawares." Now I am willing to admit that it would be a violent imagination that would mistake one of these lusty stockbreeders for an angel. It will probably be some time before even the pin-feathers will sprout from their shoulder blades. But they are susceptible and under proper influences and conditions I don't know what may happen. I remember in the early days of Des Moines, when we were dependent upon ourselves entirely for amusements, the ladies got up a public entertainment consisting chiefly of tableaux. I had the honor of officiating as stage manager. One representation was of a good and an evil spirit, representing an angel and a devil. The ladies were quite tardy in getting ready. I went into the green room to hurry matters and found the ladies dressing [great applause and continued interruption]. Do not interrupt in the middle of a sentence. I was saying I found the ladies dressing the angel—a young lady to whom they were attaching a pair of wings. I chided their delay and unfortunately remarked, "that it took a long time to make an angel out of a woman." The man who was to represent the evil spirit was sitting by, all ready, with blackened face and horns, and one of the ladies, pointing to him instantly remarked, "that it took but little time to make a devil out of a man." Of course it is only a question of time with all of this crowd. We all expect to be angels but it will take time and good feeding.

I believe I have fully exhausted the subject assigned to me, to say nothing of the audience. It is sad to have to make a speech when you don't know beforehand what you are going to say and nobody knows after you are done what you have said. Brethren we have cast our bread upon the waters—and it has returned to us after many days, literally and substantially.

I cannot conclude without thanking you for your quiet and uninterrupted attention.

During my visit to Emporia, Kansas, with my niece, Rose

Vimont, I found a volume written by Alexander H. Stephens, evidently for the purpose of justifying the attempt that had been made to destroy the government of the United States by the disintegration of the government and the establishment of the doctrine of the right of secession. That fall I was invited by the president of the faculty of Simpson Centenary College at Indianola, Iowa, to deliver an address at the college commencement. I accordingly prepared with considerable care a lecture upon the constitutional relations of the national and state governments, in which I endeavored to combat the heresies contained in Stephens's book, and the great truth that the national government was not a compact between sovereign states, but was what it purported to be—a government eminating from the source of all power: to-wit, the people. The trustees and faculty of the college, after this lecture, honored me by conferring upon me the degree of Doctor of Laws. This lecture I afterwards delivered, upon the invitation of the president and faculty of Drake University, before the students of that institution, and also before the law class of the State University at Iowa City.

About this time I also prepared and delivered on several occasions a lecture upon the legal rights of married women, containing some sarcasm and criticism upon the advanced legislation by which under our laws a wife could bring suit in the courts and obtain judgment upon a promissory note executed by her husband and payable to herself, citing an instance in which this doctrine had actually been put in practice, and remarking upon the right of the wife to issue execution against her husband and cause a levy to be made upon his personal property for the payment of the judgment, stating, however, that the law in its humanity and pity for the husband had fortunately exempted the husband's wearing apparel, including his pantaloons, from execution. This lecture I also delivered, at the request of several local institutions in several parts of the state.

CHAPTER XVIII

B. F. Allen's Bankruptcy

On the 2nd day of January, 1875, the citizens of Des Moines were startled by the news that the Cook County Bank of Chicago, Illinois, of which bank B. F. Allen was president, had closed its doors. A meeting of the citizens was called and held for consultation to ascertain what effect this would have on the local affairs of our city. Impressions seemed to prevail at first that the failure of the Cook County Bank did not necessarily involve the failure of B. F. Allen or of his private bank in the city of Des Moines, or of the National Bank of this city, of which he was president. The great question before the meeting was to ascertain "where we were at." A committee was appointed for that purpose. I had the temerity to suggest that this committee could easily ascertain what we all desired to know by examining the bills receivable in Mr. Allen's bank. I was decidedly of the opinion that the Cook County Bank had never failed and closed its doors while Mr. Allen controlled the means to avoid such a result. Some months before this time, on my return home from business out of the state, my partner, Mr. Kauffman, informed me that he had purchased a certificate of deposit on B. F. Allen's bank at a liberal discount from one J. C. Taylor. The certificate of deposit was of recent date, payable twelve months after date. It occurred to me a very strange performance that Mr. Taylor should deposit fifteen hundred dollars in the bank and take a certificate payable twelve months after date, and then go into the market and sell such a certificate at a liberal discount. As I then suspected, and afterwards ascertained the fact to be, Taylor had not deposited fifteen hundred dollars in the bank, but had furnished the bank his promissory note pay-

able to the Cook County Bank and had received in exchange for it a certificate of deposit payable twelve months after date, and this note of Taylor's had been endorsed by Allen as president of the Cook County Bank, and had been sent to New York as an asset upon which to raise money. Fortunately this little transaction coming to my knowledge induced me to remove my business from B. F. Allen's bank and I lost nothing by his failure.

A short time after this; to-wit, about the 26th of January, 1875, a gentleman from New York, to-wit, A. N. Denman, formerly a clerk in the office of Allen, Stephens & Co., came into my office and put in my hands for suit and foreclosure the following remarkable document:

NEW YORK, 18 NOV., 1874.

I hereby acknowledge the receipt of $465,000 of advances to the Cook County National Bank of Chicago for my account, same being made by Allen, Stephens & Co. in money, paper, and endorsements. I have arranged with them for additional advances. In consideration thereof I hereby grant and convey to Allen, Stephens & Co. by way of mortgage and as security for such advances, all my real estate of every kind and description, and wherever situated.

B. F. ALLEN.

This mortgage was not filed for record with the recorder of deeds of Polk county until the 19th of January, 1875. On the 30th of November, 1874, it had been placed in a sealed package and intrusted to Mr. Denman in the city of New York with sealed instructions and directions for him to proceed with the package to Chicago and there await further instructions. He was not even informed of the contents of the package and was instructed not to open it until he received advices from New York as to further proceedings.

When the people of Des Moines began to realize that B. F. Allen had really become a bankrupt they were ready to believe almost any theory that would exonerate him from the censure that he deserved in risking the money of his depositors in wild and foolish speculation. One theory promul-

gated and believed was that he had been deceived in the value of the assets of the Cook County Bank when he purchased the same. On the contrary the evidence taken in the suit to which I have alluded shows that he did not pay a dollar of his own money for the stock of the Cook County Bank. Several years before his failure and before his purchase of the Cook County Bank, or a controlling interest in it, he had been appointed by the United States Circuit Court of Des Moines receiver in a litigation that had been commenced against the Chicago, Rock Island & Pacific Railroad Company. As such receiver he had come into possession of about $800,000 of bonds issued by the Rock Island Company. These bonds he had hypothecated in New York City for money with which he carried on his speculations, and as the time approached for him to make settlement of his receivership he found it necessary to do something in order to save the sureties on his bond. He accordingly went to Chicago and in May, 1873, he purchased the controlling interest in the Cook County Bank, giving a draft for the larger part of it on Allen, Stephens & Co., and his note for the balance, all of which was ultimately paid out of the money of the depositors of the Cook County Bank. The funds that he came in control of by this means enabled him to settle his receivership. Mr. Allen, in his testimony in the case referred to gives the following account of his losses by speculation:

As a member of the firm of B. F. Murphy & Co., Chicago	$200,000
H. M. Bush & Co., Grain Speculation	75,000
Lewis & Stephens, speculators (grain)	30,000
Swamp Land speculation	18,000
San Pete Coal Co. of Utah	18,000
Denver Coal Lands	5,000
Kentucky Lands	25,000
South Evanston property	40,000
Building on So. Evanston property	40,000
Sheffield near South Chicago	32,000
Grand Pacific Hotel stock	10,000

Prairie Avenue Residence	31,000
Chicago Railway Construction Co.	10,000
Canada Southern Railway Co.	60,000
Toledo, Wabash & Western R. R. Co.	35,000
Speculation Stock Exchange	150,000

These losses only foot up $779,000, whereas in truth and in fact the depositor's accounts in his private bank in Des Moines alone amounted to $800,000 at the time of his failure, and his indebtedness to the Charter Oak Life Insurance Company for money procured by Blennerhassett from that institution amounted to over one-half million dollars, and a draft of the Iowa State National Bank $100,000 not credited to that bank until after the failure. In May 1874, one Warren Hussey, of Utah, visited Blennerhassett & Stephens in New York City and induced them to procure a pretended loan of $400,000 from the Charter Oak Life Insurance Company, then represented by its vice-president, a man by the name of White. The money was advanced as a pretended loan to one Matthew Gisborn without any security whatever save the personal security of Gisborn & Hussey, with a private understanding that Mr. White and Messrs. Blennerhassett & Stephens should have the benefit of anticipated dividends on the stock of the mine, a large share of which was in the hands of Warren Hussey for his commission as procurer; in other words, it was a speculation on the part of Allen, Stephens & Co. and White, the vice-president of the Charter Oak Life Insurance Company, being one of the causes of the failure thereafter of the Charter Oak Life Insurance Company, as the stock proved to be entirely worthless and the security of Gisborn & Hussey was of no value whatever. On April 22, 1875, B. F. Allen was adjudged a bankrupt on the petition of his creditors filed on the 23rd of February, 1875, and Hoyt Sherman, of Des Moines, was appointed assignee in bankruptcy. Mr. Jeff. S. Polk and Mr. Bisbee, an attorney of Chicago, were employed by the assignee in bankruptcy to defeat the suit for the foreclosure of the mortgage. The main ground of defense

to this mortgage was that at the time of its execution there was an agreement between Allen and Stephens & Blennerhassett that it should be withheld from record, and that between the time of its execution and the time that it was recorded Stephens & Blennerhasset represented that Allen was solvent and possessed of large properties in real estate, and they caused him to be rated by the commercial bureaus of the country as worth one million dollars, and at the same time knew that he was in fact insolvent, and this defense was held to be abundantly proved by the testimony taken in the case, and the supreme court of the United States decided that as against the creditors and the assignee in bankruptcy the mortgage was absolutely void. After the original petition was filed for the foreclosure of the mortgage I filed a supplemental bill making the Charter Oak Life Insurance Company the plaintiff and Hoyt Sherman, the assignee in bankruptcy, the respondent. After several months had elapsed from the time the suit was begun I concluded to make a personal visit to Blennerhassett & Stephens, of New York City, and try to understand the real situation and facts in the case. I spent some two weeks interviewing the two men who constituted the firm, but for some reason not known to me I never could obtain from them any very accurate account or reliable statement of the facts necessary to be understood to make the proper presentation of the case. Mr. Blennerhassett especially appeared to be a very peculiar man and his desire for concealment amounted to a controlling passion. The books of the firm of Allen, Stephens & Co. had locks upon their lids and Blennerhassett carried the key. No attempt was made to inform me of the detail of the transaction between them and the Cook County Bank, and I never became fully advised as to these matters except as they were developed by the testimony afterwards taken. The evidence showed that the correspondence between the house in New York and Mr. Allen was carried on by means of a cipher or fictitious word. Allen was represented as "head," Blennerhassett as "arm," and

Stephens as "leg" of some imaginary person. The transmission of the mortgage itself to Chicago in a sealed package with sealed instructions, and the manner in which the business was transacted were well calculated to excite suspicion, or in other words give the impression that there was something that it was necessary to conceal. That Allen was insolvent and had been for several years prior to his actual failure the testimony left no doubt, and the manner in which he conducted his business in connection with the house in New York was overwhelming proof that the parties knew that he could not promptly meet his pecuniary obligations. The real interested party in the transaction was the Charter Oak Life Insurance Company. Mr. White, the vice-president, proved to be under the influence of Blennerhassett and obtained the money of the company in matters of loan and discount to an extent that was wholly unjustifiable.

My visit to New York, however, was a very profitable one to myself. The Charter Oak Life Insurance Company and several of the banks to whom Allen's mortgages and bills receivable had been negotiated from time to time, including $100,000 of bonds of the Des Moines Gas Company, placed in my hands their collections, and I think that the securities that I brought home with me amounted to one half million dollars, and in the suit and foreclosure of these collaterals the firm of Nourse & Kauffman made very handsome profits. The litigation lasted a number of years and a final result was not obtained until the decision of the supreme court of the United States at the April term, 1882. The opinion is reported in United States Supreme Court Reports, Volume 105, page 100. After this decision was made we filed a claim of the Charter Oak Life Insurance Company against the bankrupt estate as a general creditor. In the meantime the Charter Oak Life Insurance Company itself had gone into bankruptcy. We had some doubt as to whether our claim would be allowed as we had insisted on a preference that the court had decided was fraudulent. Mr. J. S. Polk and Mr.

Bisbee, of Chicago, finally bought the claim of the Charter Oak Life Insurance Company against the bankrupt estate, and had no difficulty in having it allowed by Mr. Sherman, the assignee. These men also bought large and valuable portions of the real estate from Mr. Sherman, the assignee, and received a conveyance accordingly. The estate paid to the general creditors only, as we were advised, about fifteen cents on the dollar. Another interesting feature of the transaction was that Mr. Allen claimed the benefit of the homestead law of Iowa and claimed the fine residence on Terrace Hill with forty acres of land as exempt from his debts. The homestead law of Iowa, however, only exempted a homestead in favor of a resident of the state. Mr. Allen had been for a number of years a resident of Chicago, had purchased a home there, and had paid out $31,000 on the purchase. We also proved that he had voted as a citizen of Chicago, I think at the city, county, and state elections, and that he had offered the property on Terrace Hill for sale and had caused a number of articles to be published in the city papers claiming the property to be worth $100,000. A compromise, however, was made by the assignee in bankruptcy by which Mr. Allen was allowed the buildings and a limited amount of ground, and Mr. F. M. Hubbell purchased the same for $40,000. This $40,000 did him no good, for within a year or two he lost it in another grain speculation on the board of trade in Chicago. In the meantime his wife, who was a daughter of Captain F. R. West, had become insane and imagined that her husband's creditors were pursuing her because of their losses, and she died within a few months after losing her reason. Mr. Allen a few years afterwards removed to California, where he still lives at the time of the present writing, holding some employment from the United States government in connection with the business of preserving the timber on the public lands in that state.

CHAPTER XIX

About Prohibition

In the month of November, 1889, the democratic party of the state of Iowa, for the first time since the election of Governor Grimes in 1854, succeeded in electing their candidate for governor; to-wit, Horace Boies. This was brought about by a singular combination between the railroad and the saloon interests of the state. I have already given some account of the effect upon the question of prohibition of the foolish policy pursued by the pretended friends of temperance in securing from the supreme court of the state a decision against the right to manufacture alcohol within the limits of the state for the purpose of export, and also the foolishness and wickedness of certain pretended friends of prohibition in instituting fraudulent prosecutions with a view to making costs and fees for their own personal profit. During the administration of Governor Larrabee the railroads of the state had become very restive under the control exercised by the Railroad Commissioners of the state under the law of 1888. In the month of August, 1888, some thirty suits were commenced in the district court of Polk county against the Rock Island, Northwestern, and "Q" railroads for penalties incurred in failure to make their reports to the Commissioners as required by the statute. The railroads of Iowa had become a very potent political power. We had five railroads extending from the Mississippi to the Missouri river, and in every county of the state in which these roads were located the railroads had one or more active attorneys to look after their interests, and under such captaincy as Blythe, of Burlington, and Hubbard, of Cedar Rapids, they exercised a very important influence over the politics of the state, controlling to a large extent the nomination of supreme

judges and district judges and other state officers. The people of the state had become restive under the domination of this power. The open and shameless peddling of railroad passes to the members of the general assembly had begun to lose its power as against the rising indignation of the people. In the counties of Lee, Des Moines, Muscatine, Scott, and Dubuque on the Mississippi river, and such interior counties as Johnson and Crawford, with their foreign population, the saloon power of the state, uniting with the railroads, was sufficient to cause a successful revolt against the party in power. Horace Boies, the democratic candidate for governor, openly and shamelessly declared the prohibitory law to be cruel and unjust in its provisions, and his utterances in this behalf encouraged the violators of the law to believe what they afterwards realized, that though the courts might assess penalties, yet an executive who believed the penalty to be unjust could easily be persuaded to exercise pardoning power in their remission, and such was the result. For four years during the administration of Horace Boies the effort to enforce the prohibitory law was almost paralyzed. After incurring all the expense and trouble incident to the conviction of any one violating the prohibitory law, the people had the mortification of seeing the judgments of the courts rendered nugatory by the wrongful exercise of the pardoning power, vested by the constitution in the governor for wise and proper purposes, prostituted by an unscrupulous politician for his own political advancement and that of his party.

Another cause of this successful revolution in the politics of the state arose from the absolute cowardice of the leading republicans of the state in not defending the legislation for which they were responsible. During the candidacy of Boies for his second term, a gentleman who was a candidate on the state ticket for a state office applied to me and asked my consent to publicly discuss the question of prohibition with Mr. Boies in case the state central committee of the party would arrange for such discussion. I gave my consent to such an

arrangement, provided the committee would agree to the same, but he afterwards reported to me that the committee did not think it advisable. On the part of the public speakers in behalf of the republican cause the only discussion of the question of prohibition was an apology for the enactment of the law. They did not attempt to discuss the question of right or wrong, but only that the law was enacted because the people by their vote upon the constitutional amendment had signified their approval of prohibition. The result of this cowardice and the four years' domination of the democratic party had its result in the platform adopted by the republican state convention in the year 1893. Only the year before this the republican state convention had adopted a resolution promising the people of the state that the party would take no backward step on the subject of prohibiting the sale of intoxicating liquors as a beverage, and at this convention in 1893 they adopted the following resolution:

Resolved, That prohibition is not a test of republicanism. The general assembly has given to the state a prohibitory law as strong as any that has been enacted in any country. Like any other criminal statute, its retention, mitigation or repeal must be determined by the general assembly, elected by and in sympathy with the people and to it is relegated the subject, to take such action as they may deem best in the matter, maintaining the present law in those portions of the state where it is now or can be made efficient, and giving to other localities such methods of controlling and regulating the liquor traffic as will best serve the cause of temperance and morality.

Under this platform, which merely meant the return of the open licensed saloon to Iowa in such localities in which the people would tolerate them, Mr. A. B. Cummins and his followers were all received back with open arms as prodigal sons and became at once important leaders politically in the republican party. The friends of prohibition were shocked and alarmed at this result and at once the prominent and more courageous prohibitionists of the state joined in a call for an independent republican convention favorable to prohibition.

At the solicitation of a number of prohibitionists in the city of Des Moines I prepared the following address and call for a state convention, which address was adopted by a public meeting, held in the city of Des Moines:

When, through the machinations of men who, in their desire for success, have lost sight of principle, causes dear to humanity are about to be sacrificed, it becomes the duty of patriotic citizens to make an organized effort to rescue their imperiled rights.

As republicans we assert our unqualified devotion to the doctrines and principles of the republican party as heretofore set forth in our national platform, and as declared by republican state conventions and put in practical effect in the state of Iowa by republican legislators prior to the meeting of the republican state convention, held at Des Moines on the sixteenth inst. We declare that through the patriotic efforts of the republican party of Iowa prohibition had become the settled policy of the state, and that any attempt on the part of the politicians to induce the party to take a backward step on that question is to repudiate a past honorable record and to uselessly endanger future success by a base imitation of a hitherto despised opposition.

More than forty years ago the people of Iowa without distinction of party declared through the enactment of their general assembly, that the "people of this state would hereafter take no part in the profits of the retail of intoxicating liquors." This principle was again approved by the people of the state in the adoption of the act of 1855, approved by Governor Grimes, and more recently the people again endorsed the principle by adopting a constitutional amendment prohibiting the sale of intoxcating liquors for the purpose of a beverage. The people of the state of Iowa have never indicated any desire for a change of policy on this question, but on the contrary through the action of their representatives expressly elected upon this issue, they have constantly and consistently adhered to our present law.

The declarations of the recent republican convention have not been brought about by any change of sentiment on the part of the republicans of the state, but in our judgment its action is the result of a combination of politicians who had other and ulterior purposes at heart, and have failed to realize that whatever may have been their

own want of convictions upon the question, the great mass of people have been honest and sincere. The honest voters of the republican party are not "clay in the hands of the potter," to be molded into any fashion that may suit the professional politician. The battle that for the past quarter of a century they have been waging against the liquor power and influence, and in which they have gained so many signal trumphs, has not been prompted by a mere desire for office or place, nor have our forces been kept together by the mere "cohesive power of the hope of public plunder." Hence if the defeat of 1891 could in any measure have been attributed to the position of the party on the question of prohibition, it would not constitute a valid reason for a shameful surrender and retreat. When the republican party declared for the maintenance of the prohibitory law, and promised that the party would take no backward step on this question, the earnest and honest men of the party did not mean that the party would only pursue that policy so long as it would win, but they meant that prohibition was right and that they would maintain the right, and that they intended to fight it out on that line, not only that summer, but until the saloon should make an unconditional surrender.

We have reasons to believe and do believe that the platform of the convention of the sixteenth inst., on the subject of temperance, was brought about by the same combination of railroad and saloon influence that defeated our party in the election of 1891, aided by the timid and half-hearted defense of our platform through the weakness of our state central committee.

The implied threat of the same combination to repeat their opposition in the approaching election, induced the republican state central committee to unite in accomplishing this surrender. It is said and often repeated that there is no hope for the cause of prohibition except through the success of the republican party. This was undoubtedly true so long as the state platform pledged the party to maintain and enforce the law.

The platform adopted on the sixteenth inst. not only does not promise to maintain prohibition as a state policy, but expressly declares in favor of "something else" in those localities where the prohibitory law was not enforced. This "something else" in the pretended "interest of true temperance" can deceive no man who does not desire to be deceived. It is a base imitation of democratic state platforms, and intends merely the "Schmidt bill" or the "Gatch

bill'' or some other equally objectionable attempt to abandon prohibition as a principle and as a state policy.

We believe in the sovereignty of the state of Iowa, and in its undivided sovereignty over every foot of territory within its boundaries. We do not believe the general assembly should attempt to exercise the power to make an act criminal in one part of the state and license the same act in another part of the state. The constitution of our state requires that all laws enacted by the general assembly ''shall have a uniform operation.'' If the state shall concede that the sale of intoxicating liquors may be licensed in one part of the state and saloons may be lawfully established in one city or county, with what consistency can the state punish such acts as criminal when done in another locality within her jurisdiction. The establishment of a saloon for the propagation of drunkeness is either innocent or a criminal act. We recognize no middle ground. We do not believe in compromising with criminals or commuting offenses committed against the best interests of humanity. Neither do we believe the republican party of Iowa can ever survive an act so inconsistent with principle and her former professions, as would be the repeal of our present prohibitory law or the enactment of a license system for any part of the state.

We do not propose or recommend opposition to the election of any candidate for the general assembly on the republican ticket who is in favor of maintaining and enforcing our present law. The election of such is consistent with our past history and policy and will secure a republican United States senator. If, however, any candidate for the general assembly on the republican ticket shall declare for a saloon as against what has heretofore been recognized as republicanism, the responsibility of his defeat, with all its political consequences, will be upon him, and not upon those who are true to their convictions and principles and the past policy of the party.

We, therefore, the republicans of Polk county in mass convention assembled, at the instance and with the coöperation of the republicans of Sac and other counties of the state, who protest and dissent from the action of the state convention of the sixteenth inst., with the view of an organized effort that may save our party from committing the great wrong and outrage attempted, do hereby invite all citizens who agree with us in sentiment and purpose to meet in delegate convention in Calvary Tabernacle at Des Moines, Iowa, on Tuesday the

fifth day of September, A. D. 1893, at 10 A. M., to take such steps and devise such measures as

First. Will secure the election to the general assembly at the November election of such candidates only as will maintain the present prohibitory law.

Second. As will secure such action and such an expression of the will and wishes of the people of the state as will convince the republican managers that the path of honor is the only path of safety.

The call for this convention alarmed the leaders of the republican party in the state, and they were very active in their efforts to counteract its effect. The convention was held according to the call on the 5th of September, 1893, and we had a very large representation and a very enthusiastic convention. We adopted a platform embracing the principles indicated in the call for the convention and nominated a state ticket. Our candidate for Governor, Mr. L. S. Coffin, was not present in the convention, but Doctor Fellows, a prominent prohibitionist of the state, vouched for his entire sympathy with the movement and his acceptance of the nomination. Mrs. J. Ellen Foster, who had been president of the national W. C. T. U., was sent by politicians from Washington, D. C., and was present at the convention, for the purpose, if possible, of alienating such as she could influence from taking part in or endorsing the movement. She seated herself in the gallery over against the chair occupied by the president and scowled and looked vengeance at those who took an active part in its proceedings. When I read the call for the convention before set out she looked for all the world like Tam O' Shanter's wife when waiting for Tam's return, "Knitting her brows like a gathering storm and nursing her wrath to keep it warm." During the recess of the convention she was very busy buttonholing first one and then another of the prominent prohibitionists in attendance, taking them to a private parlor in the hotel and laboring with them to convince them that the success of the republican party was more important than the question of prohibition. After our nomination of Coffin as

our candidate for Governor, Mr. Lafe Young, editor of the *Capital,* made a visit to Mr. Coffin at his home at Fort Dodge. Mr. Coffin had prepared his letter of acceptance of our nomination, but Young induced him to cut it in two and change the latter half of it so that it would read a declination of the nomination, and by some means unknown to the public induced Mr. Coffin to take the stump and make a number of speeches on the tariff question during the political canvass that year. By some means unknown also to me, the leading railroad lawyers of the state who had supported Boies were induced to return to their allegiance to the republican party, and the party succeeded in electing Jackson their candidate for governor, and also electing a legislature in sympathy with their saloon platform. The general assembly that met in January, 1894, accordingly passed the act known as the mulct law, being chapter 62 of the laws of the 25th general assembly of the state. This act does not in terms attempt to repeal the prohibitory law then in force in the state. On the contrary, section 16 of the act expressly provides: "Nothing in this act contained, shall be in any way construed to mean that the business of the sale of intoxicating liquors is in any way legalized, nor is the same to be construed in any manner or form as a license, nor shall the assessment or payment of any tax for the sale of liquors as aforesaid, protect the wrongdoer from any penalty now provided by law, except that on conditions hereinafter provided certain penalties may be suspended."

The next section of the act provides for the circulation of a petition, and by obtaining a certain majority or percentage of the voters to sign a petition to that effect the penalties provided in the prohibitory liquor law shall not be enforced against the offender. Under this law the brewers of St. Louis and Milwaukee employed men to circulate petitions, paying them five dollars a day for their services in obtaining signatures to petitions in certain counties of the state, under which the parties who paid the required tax were secured

against any prosecutions for violations of the law. I tried several cases in the district and supreme court of the state for the purpose of testing the constitutionality of this act of the legislature. It placed the pardoning power theretofore exercised by the Governor of the state in the hands of the brewers of Milwaukee and St. Louis and their employees, provided they could by such means as they might adopt, obtain the required number of signatures to such petitions. It clearly recognized that what was a crime under the law in one part of the state, might be committed provided the necessary amount was furnished and paid into the public treasury as a commutation for the offense, and that payment should be made in advance without reference to the number of offenses that might be committed. It was clearly not a law of uniform operations under the decisions of our supreme court as theretofore held, for it was a crime in one city or county in the state and not a crime in another city or county of the state; notwithstanding the law making it a crime was still left in full force and effect, except as it was abrogated in a particular locality by the signing of certain petitions. Strange to say the supreme court of Iowa, notwithstanding their former decisions to which I have heretofore referred, sustained this law and its constitutionality, and under it in all of the counties of the state where we had any considerable foreign population the legalized saloon has returned to do its deadly work and the only compensation for it is that men who call themselves republicans have been able to hold and enjoy the honors of public office. After the decision of our supreme court upon the question of the constitutionality of this act I received from the editors of a law publication east a communication requesting my views and opinions for publication in their law magazine, and I simply wrote upon the letter addressed to me the statement that the decision made by our supreme court under this law was a political necessity and that it was an old and true adage that necessity knew no law, and I had no further comments to make upon it.

Since the prominent part that I took in this canvass of

1893 my standing with the republican party has been rather impaired; nevertheless, subsequently in the campaigns of Mr. Wm. Jennings Bryan involving the national policy of the republican party, I have taken very active part. The free coinage of silver heresy of Mr. Bryan I regarded as a serious menace to the integrity and honor of the nation, and I spent very considerable time and my own private means in making public speeches condemning that wild and visionary scheme. In state politics I have taken no active part since 1894. I never belonged to or coöperated with what has been known as the "Third party" or the prohibition party as a national organization. When the prohibitionists of Iowa united with the national organization I strongly advised against it. I could not see any hope of accomplishing anything by such an organization. The states of Kansas, Iowa, and the Dakotas had become prohibition, and in my judgment the only effectual way of reaching the question of prohibiting the sale of intoxicating liquors as a beverage, or the establishment of places of resort for such sale, was by the exercise of the police power of the states in the management of their own domestic affairs. The congress of the United States had no control over the subject, except in the matter of revenue laws or the taxing of the manufacture or sale of liquors. Our courts and the supreme court of the United States had agreed that the payment of taxes under these revenue laws and the issuing of what has been called a license, was really no protection as against the state law and its penalties. The general government does not exercise police power within the state but it may enforce penalties for the violation of revenue laws or enact laws regulating commerce within the states, but it cannot prohibit the establishment of the saloon or the maintenance of such a place merely upon the ground of preserving public order and morality. I could not and never have been able, therefore, to see the propriety of a national organization based upon the idea of prohibiting the sale of intoxicating liquors as a beverage, or establishing places of resort for such sale.

Another objection to this third party, the national prohibition party, so-called, has been the adoption of a platform favoring universal suffrage without reference to sex. This also is a question over which the congress of the United States have not heretofore exercised any jurisdiction. The question of suffrage or the right to vote has been a matter peculiarly within the control of each state of the Union and its local constitution and laws, and is not and never has been a matter of national politics. I have always believed and still believe that if the prohibitionists had confined their efforts to the several states, capturing those in which they had some prospect of success, their cause would have grown and become stronger each year. The great centers of population such as New York City, Chicago, Cincinnati, and St. Louis, and such other cities filled as they are with foreign population, who have no sympathy with the manners and customs pertaining to these agricultural states, cannot in my judgment be brought under the control of prohibition at any time during the present or next generation of men, and I regard it as foolish to spend our time and our money in such quixotic efforts. My hope in inaugurating the movement that we made in 1893 was simply to teach the republicans of Iowa the lesson that success politically was not to be attained in this state by subservience to the saloon power, and that defeat in the election of that year might result in a return of the party to its better and higher purposes in maintaining that which was right and just and humane. That we were defeated in that effort at that time was most unfortunate, but the domination of the political power of the saloon, I still have faith to believe, will work its own destruction, and that the people of this state will return to their former convictions.

CHAPTER XX

Personal Incidents

In the spring of the year 1888 I sold my home, 707 Fourth street, and built a house for my residence on my farm. We left the old home with no little regret. It had been our place of residence since the fall of 1859, with the exception of two years in which we fitted up the property temporarily on the corner of Fifth and Center, while we built the new house on Fourth in the old location. We had planted the shade trees of hard and soft maple. Here our child had been born and had grown to manhood, here we had celebrated our silver wedding in 1878, and had enjoyed the society of many kind friends and persons of distinction and influence in the state. Bishop Andrews, the bishop of the Methodist Episcopal church, with his family, resided nearly opposite to our house, and Bishop Hearst and his family had lived on Third street nearby, and our excellent neighbors, A. Y. Rawson and his first wife, Thos. F. Withrow and his family, had been our kind friends through many years. Here we had entertained such men as Governor Grimes and Governor Kirkwood and his wife, Senator Harlan and his wife, Bishop Waldron, Bishop Simpson, and other distinguished men of the state and of the church.

The most difficult problem in my life that I had to solve was the care and education of my son. I felt that everything was at stake in his proper discipline and education. During his early childhood we sent him to school as already mentioned to Mrs. Winkley, afterwards for some years to the public school and still later to Callanan College, an institution taught by Dr. Pomeroy. When the time came for him to go from home and attend college my first thought was to send him to Iowa City to the State University, but I had grave fears in

regard to the influence that prevailed in that city. The college campus was environed by saloons and public sentiment of that town was far from being what it ought to have been. Attorneys had been mobbed in the streets of the city for the offense of prosecuting the violators of the prohibitory law, and there had been no proper expression of public sentiment condemning the outrage. I consulted with a number of the best citizens of Iowa City in regard to the matter of sending my son there for his education, but I became satisfied that they knew but very little of what was transpiring in the city after bedtime. I thought it prudent to make an investigation on my own account. I accordingly took the train that left Des Moines at five o'clock in the afternoon, arriving at Iowa City about half past nine. I went to the St. James Hotel and quietly registered my name and engaged a room for the night, but did not go to bed. I waited until about half past ten or eleven o'clock, and took my hat and started out on a tour of inspection. I visited a number of the saloons on the public square and found them filled with young men, no doubt students of the college, and I met several crowds of these young gentlemen on the street headed by one of the trustees of the college in not a very sober condition. I returned to my hotel with my mind fully made up that my boy should go without an education before I would subject him to the risk of being educated in such a town. Subsequently I visited Ames in company with my wife and selected a proper room in the dormitory for my son's occupancy, and we sent him to Ames accordingly. He afterwards spent a year in California before settling down to business as an architect in Des Moines.

He was anxious to design a country farm house that should be a credit to his own skill and ability. Our new house was completed in the latter part of July of that year. We found it somewhat inconvenient to be so far away from our church privileges and from business, but took great pleasure in improving our grounds and setting out fruit and ornamental trees for our new home. I had the old road

changed so as to run east of the house. My wife soon became very much attached to the new home and here we had many pleasant reunions with our old friends and neighbors.

In 1886 I rented the farm, including the land in section 20 bought of Sneer, to Mr. Charles West for the term of three years, he carrying on a dairy farm on the place, reserving from his lease the right to occupy the orchard as well as my own residence, and also the right of pasture for a team of horses and a couple of cows. The next year, 1889, my son contracted marriage with Miss Elizabeth Baehring, and here were born my two grandchildren, Clinton Baehring Nourse on April 14, 1890, and Lawrence Baehring Nourse on October 5, 1893. My son and his wife and first child made a trip to Europe in the year 1892. In 1895 my son purchased a property on Fifth street and removed to the city and occupied the same until the fall of the year, when the children were both taken down with diphtheria. He put them both at once in a carriage and brought them out to our country home, where the oldest of the two children died September 10th. This was the first death we had in the family, and I purchased a lot in Woodland Cemetery where the little one was laid away.

The following year my health became somewhat impaired and I had a serious attack of what they called la grippe. I was somewhat overworked at that time, and under the advice of my physician I went with my wife to the state of Florida and spent the winter in St. Petersburg in that state, returning early in the spring and resuming my practice. For several successive years since then I have spent my winters in St. Petersburg, Florida.

In the year 1902 my son's health became seriously impaired, and early that fall with his wife and child he visited California, and in December of that year my wife and myself joined them. My son suffered from severe nervous condition that made it impossible for him to sleep only a few hours out of each twenty-four. He was reduced in flesh to about 117 pounds weight and I became seriously concerned for his future. Find-

ing outdoor travel to agree with him better than treatment of the doctors, we finally in the month of April, 1903, determined upon a camping expedition and a visit to the Yosemite valley. We fitted out two teams with camp wagons and tent, and started from Long Beach about the 26th of April, traveling about twenty miles a day, going first via the coast to Santa Barbara and thence via Merced over to the Yosemite valley. At Santa Barbara my wife concluded she would not go any further with us on the trip. Our roads over mountains were very narrow, the outer wheel of the wagon only three or four feet from the precipice, and she suffered nervous apprehension that deprived her of any real enjoyment of the trip. I secured the services of a young man to accompany us on the further trip and to aid in the work incident to camp life. My son's wife had suffered from a spell of nervous indigestion and was scarcely able to do the cooking for her husband and child. I became the cook for myself and my assistant and acquired considerable skill in making coffee and flapjacks and frying breakfast bacon. The scenery upon this trip and in the valley of the Yosemite has been described by many writers more skilled than myself in putting their impressions upon paper. I can only say that we all enjoyed the trip exceedingly and were strongly impressed with these wonderful mountains and valleys and great trees that have acquired a world-wide reputation. My wife and myself returned to Iowa and to our home early in July, 1903.

During the second year of the tenancy of Mr. Chas. West I had the misfortune of losing all of my barns and outbuildings by fire. The loss amounted to about $3,500 and I only had $500 insurance on one of the barns. I immediately rebuilt the barns and granary and corn cribs, taking the precaution also to build a separate barn for my own use. A few months after my return from California in that year I discovered that one of my eyes had failed, supposed to be caused by a callous condition of the optic nerve. Soon after the other eye became affected in the same way, and later in the

fall I was unable to read. I first applied to and received treatment from Dr. Pearson; afterwards I visited Chicago and took treatment of an oculist of some reputation there. The following winter I took treatment from Dr. Amos of Des Moines, and spent two weeks in the Methodist Hospital without receiving any relief or seeming benefit. These physicians were all candid enough to confess their inability to do me any good, and since that time I have been partially deprived of the use of my sight, and have not been able to read or write. My physicians promised me several years ago that I should lose my sight entirely, but in this I am happy to say they were wrong. I can still see imperfectly to get about and avoid collision with objects, but I am not able to recognize the features of friends and acquaintances.

I have continued every year to visit St. Petersburg during the winter season, and have made many pleasant and interesting acquaintances among the tourists who visit annually that place.

On the first day of November, 1906, my beautiful home was totally destroyed by fire. We lost all our furniture and clothing, except my private library and furnishings on the first floor of the house, which we succeeded in rescuing from the flames. The previous winter my wife had accompanied me to Florida and remained with me there during the season. After our house was destroyed we removed to the city and occupied apartments with my son and his wife in a block of flats then belonging to my son on Fifth street. The following winter, 1906-07, I spent in St. Petersburg, returning home in April of that year. I had been home only a few days before we made the sad discovery that my wife's health was fast failing. At her earnest solicitation, however, we rebuilt our house on the farm and in August of that year reëstablished ourselves in the location of our old home.

And now comes the saddest event of my life. On the 11th day of November, succeeding, my wife passed away. The previous 21st of March was her eightieth birthday. A short

time before that date while at St. Petersburg, Florida, I received from my daughter Elizabeth a letter stating that she intended to have some friends spend an evening with my wife to have a birthday celebration, and requesting me to write some verses and also to send a new silk dress pattern to be presented to my wife on the occasion. I had a premonition that the sad event that later transpired in the fall was not far off. I wrote as cheerfully as I could under the circumstances and sent my daughter a check with which to purchase the silk dress pattern, and the following verses I composed as well as I could with my defective sight. They were read on the occasion, and those present assure me that my wife was cheerful and enjoyed their visit very much:

My Dear Wife:—
Elizabeth, our daughter, writes to me
That she intends to have some friends to tea;
She says she can't invite them all,
Because our house is much too small,
But she selected just a few,
The ones she thinks are dearest most to you.
She intends to celebrate, for mother dear,
The birthday of her eightieth year,
And she requests that I shall write to thee,
What she is pleased to call some poetry,
And that because I can't be there
She'll read it from my vacant chair.
She also writes, that while your health is good,
That very lately she has understood
That you are suffering some distress,
And I must buy for you a new silk dress,
And send it there together with the poetry,
That she could have them both in time for tea.

The journey has been very long my dear,
And you have safely reached your eightieth year,
But you will never seem so old to me,
I still recall your face just as it used to be.
Your brow is smooth, your eyes are bright,

You still retain your appetite.
This human life doth now as ever
Depend so much upon the liver.
Some sixty years ago, I knew
A fair young girl, she looked like you.
We fell in love, a youthful dream,
But even now, this world would seem
A barren waste, if I could doubt
The love I could not live without.
'Tis more than fifty years since we were wed,
How rapidly the time has fled.
The way has not been always smooth,
I only cite the fact to prove
Our love was true. That is to say
We found some shadows o'er our way.
But they were shadows only, and did not bother,
For reaching out our hands to touch each other
We kept the path until the light
Shone out again and all was right.
We've had our joy, our grief and sorrow,
Differed today, agreed tomorrow,
Forgave each other and repented,
Firm one day, the next relented,
But after all the truth to tell
I think we've averaged very well.
'Tis almost four and fifty years
Since you, with many sighs and tears,
Bade farewell to home and friends,
Not knowing what your life might be,
With only faith in God and love for me.
I'm thinking of the time gone by,
When from your home, both you and I
Came west to seek and make a home
That we might claim and call our own.
Without our kindred, friends or wealth,
We started forth with youth and health.
Whate'er we have, whate'er we've gained
We know we've honestly obtained,
And we grew strong in faith and hope,

And never thought of giving up.
To our store we added day by day,
And faithful friends have joined us on our way.
No woman ever bore a son
More true and faithful than our one,
And when he grew to man's estate
And sought and found a worthy mate,
We got our daughter ready grown
And took and loved her for our own.
But there's another blessing yet
And one we never can forget:
Our dearest Laurence—
The only grandchild we have left,
Since of the other one bereft;
But there is also present here
A cherub from another sphere.
He comes to us from realms above,
Drawn hither by the power of love.
We can but feel his presence here
To honor Grandma's eightieth year.
I do not know how many more
Of birthdays you may have in store.
It is not within our ken to know,
Just how much further you may have to go
Before you reach the end.
But whether near or far,
We all will meet you at the "Gates Ajar."

In my younger days I had been accustomed somewhat occasionally to indulge myself in the attempt of writing what out of courtesy to my literary qualifications might be called poetry, though my life was too busy a life to indulge much in sentiment or even to indulge much in imagination. Some time the year before I wrote this for my wife's birthday, I composed and wrote the following for the benefit of the Early Settler's Association of Polk county, which was sung with considerable enthusiasm at several of their picnic celebrations. The song is sung to the tune of "John Brown's body lies a mouldering in the grave," and is as follows:

The early settlers' picnic has come around again,
And here we are together the few that still remain,
To exchange our hearty greetings and to join in this refrain,
As we go marching on.

Chorus—Glory, glory, hallelujah,
Glory, glory, hallelujah,
Glory, glory, hallelujah,
We still are marching on.

'Tis many years ago since we all came out west
To grow up with the country that is now the very best.
God gave the soil and climate and the settlers did the rest
When they came marching on.

Chorus—

We left our homes in yonder for the far off Iowa.
We came and saw her beauty and settled down to stay,
And there's not a soul among us that has ever rued the day
When we came marching on.

Chorus—

This is the land of promise where the milk and honey flow,
With corn and pumpkin plenty, and where pies and puddings grow,
With every other blessing that nature can bestow
As we go marching on.

Chorus—

We may seem a little older for our heads are silvered o'er,
But our hearts are still as young as they were in days of yore,
And we still recount the blessings the future has in store
As we go marching on.

Chorus—

This is a goodly land where we have lived and loved together;
We have borne the heat of Summer and faced the coldest weather.
Glory, hallelujah! our Iowa forever!
We still are marching on.

Chorus—

Our nation is united as it never was before,
All are happy and contented with old glory floating o'er.
We are coming Father Abraham with many millions more,
We all are marching on.

Chorus—

Our column is unbroken though some have gone before,
They have passed across the river and have reached the shining shore,
And are waiting there to greet us as they did in days of yore
When we were marching on.

Chorus—